

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION, Plaintiff,	)	
and RICHARD RASCHER, Plaintiff-	)	
Intervenor,	)	
	)	Civil Action No. 1:17-cv-06753
v.	)	
	)	Judge Franklin U. Valderrama
S&C ELECTRIC COMPANY,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT'S OPPOSITION TO PLAINTIFFS' JOINT MOTIONS IN LIMINE**

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Defendant S&C Electric Company (“Defendant” or “S&C”) submits this memorandum in opposition to the Joint Motions in Limine of Plaintiff Equal Employment Opportunity Commission (“EEOC”) and Plaintiff-Intervenor the Estate (“Estate”) of Richard Rascher (“Rascher”) (collectively, “Plaintiffs”).

## **I. INTRODUCTION<sup>1</sup>**

Plaintiffs bear the burden of establishing that the evidence they seek to exclude “is clearly inadmissible on all potential grounds.” *Hawthorne Partners v. AT&T Techs., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Lyles v. Gambino*, No. 14 C 1406, 2019 WL 5654227, at \*1 (N.D. Ill. Oct. 31, 2019). “Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context.” *Hawthorne*, 831 F. Supp. at 1400. As set forth below, Plaintiffs have failed to meet their burden on motions in limine 1-13, and thus each should be denied.

## **II. ARGUMENT**

### **1. Motion in Limine No. 1: Medical Information is Admissible**

Plaintiffs assert all evidence of Rascher’s medical information that was not reviewed in connection with Rascher’s discharge is irrelevant and should be excluded. MIL at 2-3. Contrary to Plaintiffs’ motion, Rascher’s medical information is directly related to whether Plaintiffs can carry their burden of proving Rascher was a qualified individual. *McAllister v. Innovation Ventures, LLC*, 983 F.3d 963, 968 (7th Cir. 2020) (“it is the plaintiff’s burden to provide evidence such that a rational jury could find her to be a qualified individual”); *Pellack v. Thorek Hosp. & Med. Ctr.*, 9 F. Supp. 2d 984, 990 (N.D. Ill. 1998). Here, Rascher’s medical condition – as evidenced by his own physicians’ and physical therapists’ records and observations – is directly relevant to a key issue in this case:

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<sup>1</sup> Plaintiffs’ Joint Pretrial Statement (ECF No. 143) is cited as “JPS” and Plaintiffs’ Motions in Limine (ECF No. 144) is cited as “MIL.”

whether he was a “qualified individual” under the ADA who could perform his essential job functions. Evidence of Rascher’s medical information will have “a tendency to make” it more or less probable that Rascher could sit, stand, walk, climb stairs, lift, and be around moving equipment as required to perform his job. *See* Fed. R. Evid. 401.<sup>2</sup> This is true regardless of whether Defendant had access to and/or reviewed that information before Rascher’s termination.<sup>3</sup> Therefore, the motion should be denied.

In addition, Plaintiffs’ citations to *Rooney v. Koch Air, LLC*, 410 F.3d 376, 382 (7th Cir. 2005) and *Mlsna v. Union Pac. R.R.*, No. 18-CV-37-WMC, 2021 WL 1200596, at \*2 (W.D. Wis. Mar. 30, 2021) are misplaced. *Rooney* was a summary judgment appeal that did not deal with the issue of admissibility. *Rooney*, 430 F.3d at 379. In *Rooney*, the defendant discovered “after-acquired evidence” that the plaintiff could not drive, as required for his job, because his license was invalid due to multiple DUIs. *Id.* at 382. Thus, the Seventh Circuit did “not place any weight on that fact” because it was unrelated to the plaintiff’s medical condition, including the injury upon which the alleged discrimination was based. *See id.* In the instant case, all medical evidence directly relates to the conditions for which Rascher was on leave and upon which Plaintiffs base their ADA claim. Thus, *Rooney* is inapposite.

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<sup>2</sup> *See e.g.*, Ex. A, Baggett Decl. ¶¶ 19-21, 35; Ex. B, Rascher 24:17-28:21, 29:8-30:8, 32:5-34:9, 36:15-24, 39:22-42:10; 44:1-2, 45:22-49:6; Ex. C, Roman 52:4-53:24; 87:21-23; Ex. D, Dietzen 51:20-52:20, 64:24-65:19, 74:4-10; Ex. E, Savino 27:7-28:9; Ex. F, Lange 48:21-49:21, 51:8-13, 69:22-71:9; Ex. G, Baggett 204:3-16; Ex. H, S&C282.

<sup>3</sup> Plaintiffs’ description of the medical information that Defendant reviewed is not accurate. MIL at 3. That information was not limited to Rascher’s doctors’ return-to-work notes. It also included physical therapy records, Dr. Khanna’s August 31, 2015 examination notes, and Kathleen Clawson’s first-hand observations. (Ex. H, S&C342-346; Ex. I, Clawson 42:19-24, 53:2-55:1, 74:15-79:4, 129:7-131:19, 152:17-155:7, 156:11-157:18; 166:15-19, 217:8-222:16; Ex. A, Baggett Decl. ¶ 40.) In addition, Plaintiffs fail to inform the Court that Defendant’s leave of absence policy *required* Rascher to provide Defendant with medical documentation before August 29, 2015 for Defendant to evaluate any potential return to work. (*E.g.*, Ex. H, S&C415-426, 393-409.) It is undisputed that Rascher never did so. Thus, Plaintiffs cannot attempt to capitalize on Rascher’s own failure to abide by the leave of absence policy to exclude voluminous evidence of Rascher’s inability to perform his essential job functions.

Plaintiffs misrepresent the holding in *Mlsna*. Like *Rooney*, *Mlsna* was a summary judgment case that did not decide admissibility. 2021 WL 1200596, at \*3. There, the court raised in dicta whether *Rooney*'s holding could, in some instances, be extended to after-acquired evidence of *medical conditions unrelated* to the condition underpinning the alleged discrimination. *Id.* at \*2-3. Contrary to Plaintiff's parenthetical citation, MIL at 3, *Mlsna* did not hold that medical records were not relevant to liability; rather, the court expressly stated "[o]f course, this is not to decide the relevance of any after-acquired evidence, especially as to the plaintiff's sworn statement of disability." *Mlsna*, 2021 WL 1200596, at \*3. In fact, *Mlsna* explicitly states that numerous Seventh Circuit cases "permit[] after-acquired evidence to be considered to determine whether an individual is 'qualified' within the meaning of the ADA." *Id.* at \*2 n. 1.<sup>4</sup>

## **2. Motion in Limine No. 2: Medical Provider Testimony is Admissible**

Plaintiffs seek to exclude testimony from Rascher's treating medical providers "beyond the scope of the care they provided to Rascher" on the ground that the providers were not disclosed as experts. MIL at 3.<sup>5</sup> However, Plaintiffs' motion sets up a strawman argument because the evidence in question is not "expert" testimony but rather Rascher's own doctors' treatment and observations of him. In fact, these are the very same doctors who signed Rascher's tardy return-to-work letters, upon which Plaintiffs' case depends. Further, Plaintiffs cite no authority for the proposition that a medical provider's testimony is barred when the provider is not disclosed as an expert. *See id.* No such authority exists. Rascher's own treating providers' observations during his leave of absence are

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<sup>4</sup> Citing *Johnson v. ExxonMobil Corp.*, 426 F.3d 887 (7th Cir. 2005) (considering in qualified individual analysis sworn statement in disability application made *after* termination); *Butler v. Vill. of Round Lake Police Dep't*, 585 F.3d 1020, 1023 (7th Cir. 2009) (considering post-termination disability benefits application in qualified individual analysis); *Lee v. City of Salem, Ind.*, 259 F.3d 667, 678 (7th Cir. 2001) (considering pre and post-termination disability benefits applications in qualified individual analysis).

<sup>5</sup> Motion in Limine No. 2 is largely duplicative of No. 1. Accordingly, Motion in Limine No. 2 should be denied for the same reasons stated in § II.1 *supra*.

directly relevant to whether Rascher was a qualified individual under the ADA – an element on which Plaintiffs carry the burden of proof. *See, e.g., Johnson v. Norfolk S. Ry. Co.*, No. 3:12-CV-102-JD, 2015 WL 3738545, at \*3 (N.D. Ind. June 15, 2015) (“Treating [m]edical witnesses may testify as fact witnesses concerning their personal observation, examination, diagnosis, and treatment”); *see also Wheatley v. Factory Card & Party Outlet*, 826 F.3d 412, 421 (7th Cir. 2016) (attending physician statement would be admissible and was properly considered as evidence employee was not capable of returning to work); *supra* at § II.1. (discussing relevance under Fed. R. Evid. 401 of medical evidence to qualified individual determination). Thus, Plaintiffs cannot exclude his medical providers’ testimony.<sup>6</sup>

Alternatively, Plaintiffs seek to limit the treating medical professionals’ testimony by mischaracterizing the scope of treatment by one of his treating physicians, Dr. Jacob Bitran. *See* MIL at 4. Plaintiffs couch Bitran’s testimony as an “expert opinion on Rascher’s ability to walk and work based on his orthopedic conditions.” *Id.* at 4, 5. However, Bitran’s testimony is based upon his examination, observation, and treatment of Rascher.<sup>7</sup> The Bitran testimony with which Plaintiffs quarrel, *id.* at 5 (citing Bitran 75:2-24), is taken directly from Bitran’s reading and review of a report for a CT scan that Bitran himself ordered. (Ex. J, Bitran 172-173; Ex. K, Bitran 70:13-71:7.) None of this testimony is opinion or requires qualification as an expert. Rather, this testimony goes to the heart of the “qualified individual” determination. *Smith v. Certain unknown Cook Cty. Dep’t of Corr.*

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<sup>6</sup> Plaintiffs’ deceptively claim Defendant did not request information from Rascher’s medical providers. As stated *supra* at § II.1, Defendant’s leave of absence policy expressly required Rascher to submit medical documentation, from his medical providers before August 29, 2015 for Defendant to evaluate if he wished to return to work. MIL at 3. Notably, the “return to work notes” Plaintiffs reference were also submitted *after* the August 29, 2015 expiration of Rascher’s leave of absence. *Id.*

<sup>7</sup> *See, e.g.,* Ex. J, Bitran 068-070 (July 13, 2015 progress note addressing complaint of rectal cancer management, physical therapy/status post-right hip arthroplasty, and frustration of [pace] of rehabilitation and conducting full physical examination concluding “No physically strenuous activity” and “able to carry out light or sedentary work”).

*Officers*, No. 05 C 1264, 2009 WL 10739265, at \*2 (N.D. Ill. Apr. 14, 2009) (treating physicians may testify as to symptoms, diagnoses, treatment).<sup>8</sup>

### **3. Motion in Limine No. 3: Evidence of Rascher's Admission He That Wanted to Return to Work, but Could Not Due to His Pain is Admissible**

Plaintiffs seek an order excluding Rascher's own statement on August 6, 2015 to his physical therapist that "I want to go back to work but I have to walk up 18 stairs and I can't focus because of the pain." MIL at 5 (citing IBJI 300). Rascher's physical therapist contemporaneously recorded his statement in an official PT progress note. *Id.* As such, Rascher's statement is admissible on numerous grounds under the Rules of Evidence: the statement is (i) Rascher's own statement offered against him; (ii) his then-present description of his condition while he perceived it; (iii) regarding his then-existing physical and sensory condition (i.e., pain); (iv) pertinent to his medical diagnosis and treatment; (v) recorded in the course of regularly conducting physical therapy treatment; and (vi) against his own interest as an unavailable declarant. Fed. R. Evid. 801(d)(2)(A) (party admission); 803(1) (present sense impression); 803(3) (then-existing physical mental, emotional, or physical condition); 803(4) (statement made for medical diagnosis or treatment); 803(6) (records of a regularly conducted activity); 804(3) (statement against interest).<sup>9</sup>

Plaintiffs also claim Rascher's statement should be excluded because his condition improved sufficiently between when the statement was made on August 6, 2015 and the expiration of his leave of absence about three weeks later on August 29. MIL at 6. However, even if this were true (it is not), the jury may assign to Rascher's admission the weight it deems appropriate. *See, e.g., Tompulis v.*

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<sup>8</sup> Plaintiffs do not suggest any way in which any other doctor or physical therapist might offer testimony outside the alleged scope of his or her treatment of Rascher. Indeed, they concede this motion pertains exclusively to Bitran. *See* MIL at 5 (concluding that "As such, any opinion *by Dr. Bitran* as to how Rascher's orthopedic conditions effected [sic] his ability to walk and do his job should be barred.") (emphasis added).

<sup>9</sup> Plaintiffs continue their erroneous mantra that Defendant not reviewing certain medical evidence in advance of Rascher's separation militates against admissibility under Rules 401 and 402. MIL at 5. For the reasons stated *supra* at §§ II.1-2, this evidence is relevant, and their position lacks merit.

*Schwartz & Freeman*, No. 92 C 7375, 1994 WL 419607, at \*3 (N.D. Ill. Aug. 9, 1994) (testimony inconsistent with records goes to the weight of the evidence not its admissibility). Plaintiffs are free to argue that other medical documentation after August 6, 2015 supports their position. Any prejudicial effect of Rascher's statement that he could not return to work therefore does not *substantially* outweigh its probative value. *See Est. of Gee ex rel. Beeman v. Bloomington Hosp.*, No. 1:06-CV-00094-TWP, 2012 WL 639517, at \*4 (S.D. Ind. Feb. 27, 2012) ("Rule 403 is heavily tilted in favor of admissibility").

**4. Motion in Limine No. 4: Evidence of the Policy Prohibiting Individuals from Being in Plant Production Areas with Assistive Devices is Admissible.**

Plaintiffs assert that evidence of Defendant's policy prohibiting individuals from being in the plant production areas who utilize an assistive device (such as crutches, a cane, or a medical boot) to ambulate should be excluded on the basis Defendant cannot establish a proper foundation. MIL at 6. First, Plaintiffs claim Defendant does not have any assistive device policy because Mark Lange testified that "all of Defendant's safety policies are in writing," and "Defendant had no written policy about the use of assistive devices." *Id.* However, the testimony Plaintiffs cite states: "Q. Are all of *the important* safety policies at S&C in writing?...A. I would say yes." (Ex. F, Lange 35:2-7) (emphasis added). As such, Plaintiffs have deliberately misquoted Lange's testimony to support their false claim that no policy exists. Plaintiffs' misrepresentation is fatal to their argument.

Second, multiple witnesses have already testified to personal knowledge of Defendant's longstanding practice of prohibiting employees who need an assistive device from being in the plant production areas. (Ex. F, Lange 48:16-49:2, 56:1-15 (employees prohibited from production area when any medical walking assistive devices); Ex. G, Baggett 203:16-20 (same); Ex. I, Clawson 60:20-61:10 (same).) Moreover, any lack of a written policy goes to the weight of these witnesses' testimony rather than its admissibility. *See Tompulis*, 1994 WL 419607, at \*3. Accordingly, a proper foundation exists to introduce evidence of Defendant's policy regarding the use of assistive devices



in the production areas. *See* Fed. R. Evid. 602 (witnesses may testify to a matter only if there is evidence to support personal knowledge, which may consist of the witness's own testimony).

**5. Motion in Limine No. 5: Evidence of Defendant's Offer to Conduct an FCE for Rascher is admissible**

Plaintiffs' motion in limine No. 5 is the mirror opposite of Defendant's motion in limine No. 2, which seeks to allow evidence relating to S&C's November 2015 invitation to conduct a functional capacity exam on Rascher. For the reasons stated in the Memorandum in Support of Defendant's Motions in Limine (pp. 6-9), Plaintiffs' motion should be denied, and the evidence of the FCE invitation should be allowed into evidence.

**6. Motion in Limine No. 6: Evidence of Rascher's August 2015 Termination is Admissible**

Seeking to upend the fundamental role of the jury as factfinder, Plaintiffs next request the Court to bar evidence and testimony that Rascher was terminated in August 2015 in accordance with Defendant's leave of absence policy. Plaintiffs argue that the Court has already ruled Rascher was not terminated in August 2015. MIL at 8. Here again, Plaintiffs mischaracterize the record.

First, in its January 14, 2020 Order, the Court declined to find that Defendant was, as a matter of law, "entitled to summary judgment simply because Rascher failed to provide a doctor's release by August 29, 2015." (Dkt. 100 at 2; Dkt. 114 (denying motion for reconsideration and stating same).) Second, Plaintiffs' citation to the Court's earlier ruling denying S&C's Rule 12(b)(6) motion to dismiss, *EEOC v. S&C Elec. Co.*, 303 F. Supp. 3d 687, 689 (N.D. Ill. 2018), is immaterial, as that decision accepted Plaintiffs' Amended Complaint allegations as required by Rule 12(b)(6). Third, Plaintiffs conveniently ignore that the Court expressly stated at the summary judgment oral argument that "there's a lot of factual nuance" regarding whether "his [i.e., Rascher] [time] period was up on August 29th...even though [the Court] realize[s] that there are good points to be made

on both sides.” (Ex. L, 3/5/20 Trans., 12:12-22.) Thus, the Court left open for trial whether Rascher was separated on August 29, 2015. In any event, the jury – not the Court – is the finder of fact.

There is plenty of record evidence to show Defendant indeed separated Rascher effective August 29, 2015. (*See, e.g.*, Ex. G, Baggett 46:13-47:8 (Defendant accepted Rascher’s request for it to reconsider his August 29, 2015 termination which Defendant treated as an appeal), 128:21-23 (stating Rascher was terminated August 29, 2015); Ex. H, S&C 274-276 (March 11, 2015 letter to Rascher stating employment would be terminated if Rascher could not return to work by August 29, 2015), S&C 264 (July 30, 2015 letter stating same), S&C 503-506 (Burton checklist documenting August 29, 2015 LTD termination date); Ex. M, Burton 101:24-103:18, 112:4-14 (August 20, 2015 meeting informing Rascher of same).) This evidence should be allowed for the jury to determine this fact issue. *See* Fed. R. Evid. 401.

#### **7. Motion in Limine No. 7: Evidence of Rascher’s Obituary is Admissible**

Plaintiffs seek to exclude Rascher’s obituary as inadmissible hearsay. MIL at 9. However, “obituaries are admissible under Federal Rule[] of Evidence 902(6), which provides that newspaper articles are self-authenticating.” *United States v. Hatfield*, No. 08-30020-DRH, 2008 WL 4516320, at \*3 (S.D. Ill. Oct. 3, 2008) (rejecting argument obituaries are hearsay).<sup>10</sup> Further, the statement in Rascher’s obituary that he “retire[d] after 52 years of service” does not constitute hearsay as defined by Rule 801. Under Rule 801(d)(2), “a statement [] offered against an opposing party,” which “was made by the party in an individual or representative capacity” is not hearsay. In this case, Defendant has reason to believe Rascher’s obituary was created by the Estate, who now stands in Rascher’s place. (Dkt. 137-138 (substitution of Estate for Rascher).) Thus, the statement that Rascher retired

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<sup>10</sup> Rascher’s obituary appeared in a newspaper. *E.g.*, Ex. N; <https://www.legacy.com/us/obituaries/dailyherald/name/richard-rascher-obituary?pid=198585932> (last visited July 4, 2021).

from Defendant is admissible and relevant to show Rascher's separation was a retirement rather than an improper discharge.

In addition, the statement regarding Rascher's retirement is admissible under Rule 804's hearsay exception for statements against interest by unavailable declarants. Rascher is unavailable to testify because he has passed away. Fed. R. Evid. 804(a)(4). The statement is against Rascher's interest because it concedes Defendant did not discriminate against him, and thus is contrary to his pecuniary interest and invalidates his claim against Defendant. *Id.* at 804(b)(3)(A). Accordingly, the obituary statement that Rascher's separation was a retirement (i.e., LTD retirement) rather than a discriminatory termination should not be excluded.

#### **8. Motion in Limine No. 8: Evidence of Disability Payments is Admissible**

Plaintiffs claim that Rascher's disability insurance payments were provided by a collateral source and thus such evidence should be excluded as irrelevant and confusing to the jury as it relates to damages. MIL at 9. This motion should be denied first and foremost because the key condition to receive these disability payments was Rascher's stated inability to perform his job; this is relevant to the question of whether he was a qualified individual. *See* Fed. R. Evid. 401. To be and remain eligible for STD pay, Rascher had to document his inability to work and remain under continuing physician care. (Ex. H, S&C415-426, 332-333, 336-337, 298-300; Ex. G, Baggett 113:15-17; Ex. A, Baggett Decl. ¶¶ 12, 14, 26, 28-29.) Rascher was similarly required to provide the LTD insurance carrier medical documentation showing he was unable to work to receive LTD benefits. (Ex. H, S&C393-414, 630-637; Ex. G, Baggett 67:6-8; Ex. A, Baggett Decl. ¶¶ 13, 15-16, 29.) As such, both Rascher's receipt of disability payments, and his statements applying for these benefits, are directly relevant to show his own admitted inability to perform his essential job functions and therefore are admissible.

Moreover, contrary to Plaintiffs' motion, Rascher's disability payments are not subject to the collateral source rule. The collateral source rule operates "not to prevent the plaintiff from being overcompensated but rather to prevent the tortfeasor from paying twice. In an employment case, if the employer is the source of the funds at issue, then the payments can be deducted from the award." *Flowers v. Komatsu Mining Sys., Inc.*, 165 F.3d 554, 558 (7th Cir. 1999). Here, Defendant was the source of the disability funds at issue because it provided to Rascher free of charge the short-term disability income and the long-term disability insurance policy through which he received the payments. (See, e.g., Ex. H, S&C415-426, 630-637, 394-414; Ex. G, Baggett 68:22-24, 139:16-20; Ex. A, Baggett Decl. ¶¶ 12-13.) Thus, the cases cited by Plaintiffs involving governmental SSDI benefits are inapposite. MIL at 10 (citing *Stragapede v. Evanston*, 125 F.Supp.3d 818, 828-829 (N.D. Ill. 2015 and *Schuster v. Shepard Chevrolet, Inc.*, No. 99 C 8326, 2002 WL 507130, at \*7 (N.D. Ill. Apr. 3, 2002)). Because Defendant provided Rascher's disability payments, the payments are subject to deduction from any award.

**9. Motion in Limine No. 9: Rascher's Admission He Knew He was Required to Return to Work by August 2015 is Admissible**

Plaintiffs next attempt to exclude Rascher's statement to a therapist that he had been awarded disability benefits "until August [2015] where he must return to work or lose his job." MIL at 10-11 (citing Lutheran 724-725 (attached hereto as Exhibit O)). Plaintiffs' attempt to exclude this admission by Rascher should be rejected.

As a threshold matter, Plaintiffs' premise that a privilege applies under Rule 501 because "Rascher has alleged only garden variety emotion distress" is wrong. MIL at 10. In *Laudicina v. City of Crystal Lake*, the court held that under Seventh Circuit precedent, plaintiffs waive the psychotherapist-patient privilege upon placing their mental health at issue, "even when only claiming to seek compensation for 'garden variety' mental health damages." 328 F.R.D. 510, 512-18 (N.D. Ill. 2018) (collecting cases) (explaining Seventh Circuit applies waiver of the psychotherapist-patient

privilege broadly and rejects the “garden variety” approach). Thus, Plaintiffs’ basis for exclusion is fundamentally flawed. *See* MIL at 10.<sup>11</sup>

Rule 501’s application is also improper because Rascher’s statement that he knew he must return to work by August 2015 or be separated is admissible on multiple independent grounds. *See, e.g., Equal Emp. Opportunity Comm’n v. Int’l Profit Assocs. Inc.*, No. 01 C 4427, 2010 WL 11619208, at \*2 (N.D. Ill. June 3, 2010). For example, Rascher’s statement is probative under Rule 401 as to whether he was legitimately discharged in August 2015 pursuant to S&C’s leave of absence policies. Further, the statement is relevant to rebut Plaintiffs’ anticipated argument that Rascher was not aware of the requirements of S&C’s leave of absence policies. The statement also passes muster under Rule 801(d)(2)(A) as a statement offered against an opposing party made by that party, and Rule 804(3)(A) because it is a statement against Rascher’s interest (and Rascher is an unavailable declarant).

**10. Motion in Limine No. 10: Evidence of Rascher’s Use of Narcotics and Defendant’s Prohibition of the Use of Narcotics is Admissible**

Plaintiffs want to exclude evidence of Rascher’s use of narcotics, but fail to offer any legitimate basis for doing so. MIL at 11. Aside from the title of Motion in Limine No. 10, Plaintiffs’ brief does not actually address the admissibility Rascher’s prescriptions for narcotic drugs; instead, it asserts Rascher did not take such pain medication, and then focuses on the admissibility of Defendant’s policy. *See id.* On this basis alone, Plaintiffs fail to justify the exclusion of evidence

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<sup>11</sup> In any event, Plaintiffs have waived any right to privilege. As Plaintiffs concede, they did not assert privilege upon production of the two-page consultation summary at issue, nor did they object to its public filing in the parties’ summary judgment submissions. *See* MIL at 11 (citing Lutheran 724-725 (Ex. O)). Designating the document as confidential under the protective order does not alter this result, because the protective order expressly states such designations do not govern admissibility at trial. (Dkt. 56 ¶ 11.) Thus, even if Plaintiffs had a basis to claim privilege (and thus potential exclusion under Rule 501), they have waived such privilege by waiting nearly two years to, until the eve of trial, to raise the issue. *See, e.g., Ritacca v. Abbott Lab’s*, 203 F.R.D. 332, 335 (N.D. Ill. 2001); *Int’l Profit Assocs. Inc.*, 2010 WL 11619208, at \*2 (denying motion in limine because “the [psychotherapist-patient] privilege may be waived”).

related to Rascher's repeated prescriptions by his treating physicians over a course of time for narcotic pain medication.

Additionally, excluding Rascher's prescriptions for narcotic painkillers and Rascher's use of these drugs is – like other medical evidence discussed above – probative as to whether Rascher was a “qualified individual” under the ADA who could perform his essential job functions in light of his diminished physical capacity. *Supra* at II.1-2. As noted above, whether or not S&C was aware of or considered these medical facts at the time of separation is not the question; instead, the relevant inquiry is Rascher's ability to perform the job. *Supra* at II.1-2; MIL at 11. Ultimately, Rascher's narcotics prescriptions and use of same corroborate Defendant's assessment that Rascher could not perform his essential job functions, and the evidence is therefore relevant to the jury's “qualified individual” determination. *See* Fed. R. Evid. 401.

Here again, Plaintiffs attempt to support their motion with misrepresentations of the record. Plaintiffs' statement that Rascher testified “he did not take pain medicine” is cherry-picked out of context. MIL at 11. Instead, Rascher was asked if he recalled telling his physical therapist that he was in “in pain and the pain medication wasn't helping.” (Ex. B, Rascher 231:5-7.) His full response includes his claim that “pain medicine does not work on me.” (*Id.* at 151:15-152:3; 231:8-10 (confirming he was prescribed narcotics, took narcotics, but felt he did not get good results from the drugs).) As such, Rascher's testimony establishes he actually did take narcotics; indeed, it would be impossible for Rascher to know the efficacy of the narcotics without having taken these drugs. Plaintiffs' reliance on Rascher's testimony therefore fails establish any basis to exclude evidence regarding Rascher's use of narcotics.

Further, even if Rascher had testified he did not take narcotics, Plaintiffs' motion still fails. That statement would directly contradict the voluminous progress notes and testimony from Rascher's doctors and physical therapists. (*See, e.g.*, Ex. P, LM Prasad045-046, 050-052, 056-057; Ex.

Q, IBJI056-060; Ex. J, Bitran068-070, 117-120 (establishing Rascher’s prescriptions for Hydrocodone, Tramadol, and Norco from December 2014 through at least March 2018).<sup>12</sup> As such, Rascher’s testimony would not bar admission of this evidence; rather, it would be a credibility determination for the jury. *See, e.g., Woods v. Amazon.com, LLC*, No. 17 C 4339, 2019 WL 2323874, at \*14 (N.D. Ill. May 30, 2019); *Burroughs v. Cook Cty. Clerk*, No. 17 C 5098, 2019 WL 10892151, at \*2 (N.D. Ill. Mar. 6, 2019) (“plaintiff’s testimony and centrality of her credibility...weigh heavily in favor of admission”). The jury should be free to conclude Rascher’s testimony is less believable than that of his treating physicians, physical therapists, and their written records.

Plaintiffs also move to exclude evidence related to Defendant’s policy prohibiting employee use of narcotics in the performance of their duties. MIL at 11-12. This evidence is admissible on several grounds. First, to be a qualified individual, Rascher must have been able to perform his essential job functions; under S&C’s policy, he could not do so if he was taking narcotics. Thus, Defendant’s narcotics policy tends to make it less probable that Plaintiffs can prove Rascher was a qualified individual. *See* Fed. R. Evid. 401. Further, Defendant’s policy against the use of narcotics is evidence of the safety hazards Rascher would encounter at Defendant’s facilities – especially with regard to the production area (e.g., moving vehicles, walking surface irregularities, slip and fall hazards, forklifts, overhead cranes, bins, pallets, hoses, and other objects). *See supra* at 2 n. 2.

In the alternative, Plaintiffs’ wish to exclude S&C Vice President of Human Resources Donna Baggett’s testimony regarding the narcotics policy due to an alleged lack of personal knowledge under Rule 602. MIL at 12. Here again, Plaintiffs misrepresent the witness’s testimony. Contrary to Plaintiffs’ claim that “any information she had about a narcotics policy...was

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<sup>12</sup> *See also* Ex. R, Park 40:16-42:19, 49:4-51:10, 51:18-52:7, 58:13-59:12; Ex. S, Clay 14:24-15:23, 22:3-8, 30:8-31:11, 33:8-34:4; Ex. K, Bitran 83:4-86:7, 91:16-95:4; Ex. T, Higgins 29:3-14; Ex. B, Rascher 151:21-152:16.

information that she received from Clawson,” Baggett testified she was familiar with the narcotics policy before emailing Clawson regarding the same. (Ex. G, Baggett 172:7-173:3 (confirming Baggett was “somewhat familiar with [the narcotics policy]” before she read Clawson’s email and knowledge, that Defendant “would wait until the person didn’t have that need [for narcotics],” and that Defendant “require[s] a release from the doctor” with respect to narcotics usage).) Baggett’s testimony as S&C’s VP of HR is properly founded and is therefore admissible under Rule 602.

**11. Motion in Limine No. 11: The Term “Disparaging Remarks” is Vague, and the Court Should Therefore Reserve Rulings for Trial**

Plaintiffs Motion in Limine No. 11 seeks to bar “generalized, negative remarks about the EEOC.” MIL at 12. Plaintiffs’ motion is vague and ambiguous insofar as it fails to offer any ascertainable definition of what they seek to exclude. Plaintiffs cite only to *Ultratec, Inc. v. Sorenson Commc’ns, Inc.*, No. 13-CV-346-BBC, 2014 WL 4829173, at \*4 (W.D. Wis. Sept. 29, 2014). In *Ultratec*, a non-government plaintiff sought to exclude disparaging remarks about the USPTO related to 35 U.S.C. 282’s presumption that patents are valid. *See* Ex. V, *Ultratec*, No. 13-CV-346-BBC at Dkt. 422 (*Ultratec*’s motion in limine). Unlike *Ultratec*, Plaintiffs’ request here comes in a starkly different in factual context and the term “disparagement” is not defined in relation to any statute. MIL at 12. Thus, while Defendant has no intention of “disparaging” the EEOC, the Court’s ruling on this issue is best reserved for trial where context will exist for what Plaintiffs may deem “disparaging.” *See, e.g., Betts v. City of Chicago, Ill.*, 784 F. Supp. 2d 1020, 1031 (N.D. Ill. 2011) (reserving ruling for trial where “the court will be better able to rule on the admissibility...when the context...is clear”).

**12. Motion in Limine No. 12: Evidence Regarding the Truth or Falsity of Witness Testimony Should be Ruled on at Trial**

Plaintiffs’ Motion in Limine No. 12 requests exclusion of testimony about whether one witness believes another’s is truthful. MIL at 12. Plaintiffs cite *United States v. Freitag*, which held that it was impermissible to ask the witness if other witnesses were lying, rather seeking testimony as to



the accuracy of other witnesses' testimony. 230 F.3d 1019, 1024 (7th Cir. 2000). To the extent Plaintiffs solely seek to bar questions expressly asking whether another witness is lying, Defendant does not object. Beyond this, any rulings on this issue should be made at trial in context, as any conflicting testimony among witnesses necessarily raises credibility issues. *See, e.g., United States v. Evans*, No. 09 CR 152, 2010 WL 2104171, at \*4 (N.D. Ill. May 25, 2010) (witness's "testimony and credibility will certainly be an important aspect of the trial if he testifies, especially if – as is certain – his testimony conflicts with that of other witnesses").

### **13. Motion in Limine No. 13: Evidence that is Publicly Available is Admissible**

Plaintiffs ask the Court to bar the introduction of previously unproduced discovery or undisclosed witnesses. Defendant does not intend to call any undisclosed witness and does not oppose that portion of the motion. However, Plaintiffs' request should be denied to the extent it seeks to bar publicly available information that is both reasonably related to prior discovery and produced in advance of trial, as there would be no unfair surprise or undue prejudice. *See, e.g., Thorncreek Apartments III, LLC v. Mick*, 886 F.3d 626, 636 (7th Cir. 2018) (affirming admissibility of publicly available financial records that pre-dated scope of discovery and were produced before trial); *see also United States v. Price*, 13 F.3d 711, 719 (3rd Cir. 1994) (unfair surprise is a consideration under Rule 403).

WHEREFORE, for the reasons stated above, Defendant respectfully requests this Court to deny Plaintiffs' Motions in Limine Nos. 1-13.

Dated: July 6, 2021

Respectfully submitted,

S&C Electric Company

By: /s/ Steven L. Brenneman  
One of its attorneys

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on July 6, 2021 he caused the foregoing **Defendant's Opposition to Plaintiffs' Motions in Limine** to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, using the Court's CM/ECF system, which shall send notification of such filing to all counsel of record.

/s/ Steven L. Brenneman

Steven L. Brenneman

# Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION, Plaintiff,	)	
and RICHARD RASCHER, Plaintiff-	)	
Intervenor,	)	
	)	Civil Action No. 1:17-cv-06753
v.	)	
	)	Judge Robert W. Gettleman
S&C ELECTRIC COMPANY,	)	
	)	
Defendant.	)	
	)	

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**DECLARATION OF DONNA M. BAGGETT**

I, Donna M. Baggett, declare:

1. I am an adult and am legally competent to make this Declaration. I have personal knowledge of the facts set forth in this Declaration, and I would testify competently thereto.
2. I have worked in the Human Resources department at S&C Electric Company ("S&C") for 30 years. Since January 1, 2012, I have been the Vice President of Human Resources, which is the position I hold today. During all relevant times, I have been a custodian of employee-related records at S&C.
3. S&C designs and manufactures switching and protection products for electric power transmission and distribution and offers related services. S&C's principal place of business and primary manufacturing facility is a 46-acre industrial complex located at 6601 North Ridge Boulevard, Chicago, Illinois 60626.
4. During all relevant times, S&C has employed over 1700 employees at its Chicago facility. S&C has been a prominent employer in Chicago for over 100 years.

5. As Vice President of Human Resources, in 2014 and 2015 and during all relevant times, my job duties have included, but were not limited to, supervising the Benefits Services team, the Health Services team, and the traditional Human Resources team, among others. The services encompassed in these areas include, without limitation, maintaining personnel records; applying employment-related policies, procedures, and practices such as leaves of absence, short-term disability, long-term disability, and anti-discrimination; providing counseling, advocacy, and problem resolution services for employees; providing benefits and overseeing benefit plans, policies, and practices; and operating S&C's on-site occupational health clinic.

6. S&C is committed to providing its employees with a workplace that is free of discrimination and harassment. During all relevant times, S&C has maintained and enforces policies and procedures prohibiting discrimination and harassment.

7. One of S&C's guiding principles is that its culture promotes trust, teamwork, dignity and respect within its diverse workforce. S&C's Statement of Purpose & Guiding Principles sets forth these principles, a copy of which is attached as Exhibit A. (This document was marked as Deposition Exhibit 42 in the deposition of Richard Rascher ("Rascher") held on December 12, 2018.)

8. S&C's equal employment opportunity policy ("EEO policy") provides that discrimination (including discrimination based on race, color, age, disability, gender, religion, and national origin) and retaliation is strictly prohibited. A copy of S&C's EEO policy at all times relevant in this case is attached as Exhibit B. (This document was marked as Deposition Exhibit 40 in Rascher's deposition held on December 12, 2018.)

9. S&C's policy on maintaining a workplace free of harassment sets forth the Company's commitment to equal employment opportunity and preventing, responding to, and

eliminating unlawful discrimination and harassment. A copy of S&C's harassment policy at all times relevant in this case is attached hereto as Exhibit C. (This document was marked as Deposition Exhibit 41 in Rascher's deposition held on December 12, 2018.)

10. Both the EEO policy and the harassment policy provide that S&C does not tolerate discrimination, retaliation, or harassment on any basis including age, disability, race, color, national origin, gender, religion, and will take appropriate corrective action against any employee who is found to have violated this policy. These policies further set forth a process for reporting complaints of discrimination and/or harassment, and the Company's commitment to investigate complaints.

11. Attached as Exhibit D is a true and correct copy of S&C's Policy Bulletin No. 61, titled "Leaves of Absence – Monthly and Annual Pay Groups." (This document was marked as Deposition Exhibit 44 in Rascher's deposition held on December 12, 2018.) Attached as Exhibit E is a true and correct copy of S&C's Policy Bulletin No. 51, titled "Excused Absences and Leaves of Absence – Hourly Pay Group." (This document was marked as Deposition Exhibit 43 in Rascher's deposition held on December 12, 2018.) Both of these policies have been in effect during all relevant times and among other things provide that the maximum length of a leave of absence is six months, and that an extension of up to an additional six months may be granted for a maximum time off of one year. The policies provide that if an employee does not return to work at the end of one year, the employee will be terminated from employment. The policies further provide that an employee returning from a leave of absence due to illness or injury must provide a release to return to work from a physician and the release must be acceptable to S&C's Health Services department.

12. Employees who are unable to work because of an illness or injury may receive income under S&C's self-funded short-term disability (STD) pay practice and S&C's long-term disability (LTD) insurance plan. Under S&C's STD pay practice, the cost of which is borne entirely by S&C without cost to the employee, salaried, exempt employees who are absent from work due to a non-work injury or illness continue to receive full salary from S&C for up to six months. To be and remain eligible for STD pay, an employee must provide acceptable medical documentation of the employee's inability to work to S&C's Health Services department and remain under the continuing care of a physician. Rascher, a salaried, exempt employee, provided adequate medical documentation of his total disability and received full salary throughout the entire six months of his STD leave of absence.

13. An employee who is unable to return to work after six months of STD leave may apply for LTD benefits through S&C's LTD insurance, which is provided free of charge to all full-time S&C employees, and which pays two-thirds of an employee's salary. To obtain LTD benefits, an employee must provide the LTD insurance carrier medical documentation establishing the employee is unable to work. In order to continue to receive LTD benefits, the employee must remain unable to work, and is required to notify the LTD carrier and S&C of any change in health status that would allow the employee to return to work, with or without reasonable accommodation.

14. Attached as Exhibit F is a true and correct copy of S&C's Short-Term Disability Pay Practice summary booklet. (This document was marked as Deposition Exhibit 45 in Rascher's deposition held on December 12, 2018.) This document has been in effect during all relevant times and among other things provides that:

After any non-occupational absence for injury or illness of over five days or more or after any outpatient or inpatient surgery, a



Return to Work Release providing sufficient medical documentation and completed by the treating physician must be personally returned to Health Services before an employee may report to work. Health Services must agree that the employee is fit to resume the essential functions of their job and may require further medical clearance prior to releasing the employee to return to work.

In addition, the document provides that whenever an employee is off work, the employee must keep supervision informed regarding the length of an absence and plans for returning to work.

15. Attached as Exhibit G is a true and correct copy of S&C's Long-Term Disability Plan summary plan description dated August 2014. (This document was marked as Deposition Exhibit 47 in Rascher's deposition held on December 12, 2018.) This document has been in effect during all relevant times and among other things provides that an employee who is absent from work for a period of twelve consecutive months due to a disability will be terminated from employment.

16. Attached as Exhibit H is a true and correct copy of S&C's Long-Term Disability Plan summary plan description dated August 2012. (This document was marked as Deposition Exhibit 46 in Rascher's deposition held on December 12, 2018.) Like the August 2014 version (Exhibit G), this document among other things provides that an employee who is absent from work for a period of twelve consecutive months due to a disability will be terminated from employment.

17. S&C hired Rascher in 1962 as a Junior Draftsman. Over the next three decades Rascher held positions of Draftsman, Designer, Assistant Supervisor, Supervisor, and Senior Design Coordinator. In the mid-1990s, Rascher ascended to the position of Senior Product Designer in S&C's Department 712, which is devoted to custom-made switches and fuses. In 2012, his job title was changed to Principal Designer, but his duties did not change in any material way with this title change. Rascher was the only Principal Designer in his department.

In his positions since the mid-1990s, Rascher oversaw a team of more junior designers who worked with him on the second floor “mezzanine” of Building 12 at S&C’s Chicago manufacturing complex.

18. Rascher’s essential functions as Principal Designer included processing new customer orders; creating and/or overseeing design changes for customer-driven modifications to standard S&C products; preparing design files; collaborating with S&C’s sales personnel and product specialists; overseeing the work of more junior designers; and interacting with employees on the plant floor to answer production inquiries and troubleshoot unique issues that often arose in the custom-manufacturing process. Rascher’s duties required sitting, standing, walking, climbing stairs, moving in and through S&C’s manufacturing environment, reading and understanding blueprints, communicating with others, and inspecting work of others. At times Rascher also needed to lift and work with large reference binders which, along with the blueprints, were maintained on the mezzanine of Building 12.

19. As part of his job duties Rascher would walk up and down a 22-step stairwell between the manufacturing areas of S&C’s plant and the Building 12 mezzanine where Rascher’s work station and his team of more junior designers were located. There are no passenger elevators to the mezzanine in Building 12. Rascher’s essential functions included going to multiple locations on the production floor of Building 12A (which is adjacent to Building 12) where the very large products Rascher supported were built. This was required to support the custom product manufacturing operations, including troubleshooting problems that often arose as assemblers worked to build products according to the specific, customized designs. The distance from the Building 12 mezzanine stairwell to these various manufacturing areas of Building 12A measures at least 248 feet.

20. Due to the size and layout of S&C's 46-acre Chicago manufacturing complex, the distance from the nearest handicap parking space in the "Green" parking lot north of Building 12A, where Rascher normally parked, to his work station on the mezzanine level of Building 12 measures 668 feet and includes a ramp at the building entrance (in lieu of stairs) plus 22 stairs up to the mezzanine; these stairs range in height from 7-3/8 inches to 7-7/8 inches. The only alternative parking spot that would have been closer to Rascher's work station was a handicap parking space in the "Green" lot east of Building 12, which measures 562 feet to Rascher's work station and includes the same 22 stairs noted above. This route, however, includes a 58-foot incline to 33.5 inches of elevation (0.58 inch height change per foot of run), and requires an individual to walk around an active loading dock and to navigate past pallets and equipment that are staged in front of the loading dock at any given time. The 58-foot incline is frequently used by forklifts to transfer products and materials from inside to outside the building and vice versa, which has resulted in a pitted surface on the incline.

21. On a near-constant basis, S&C's production areas (including the pedestrian walkways throughout these areas) necessarily contain equipment, materials, moving vehicles, irregularities in walking surfaces, and other potential obstacles which can present slip, trip, and fall hazards around which employees must maneuver. S&C's production areas include forklifts, lift trucks, carts, large overhead cranes carrying suspended loads of steel parts, finished products, and other items, and other powered vehicles moving bulky materials and/or heavy products, as well as temporary spills and work items such as bins, pallets, hoses, cords, and other protruding objects. In part as a result of these potential hazards posed to individuals with poor mobility, during all relevant times S&C maintained an unwritten policy that prohibits individuals from being in plant production areas who utilize (whether permanently or just temporarily) an

assistive device to ambulate, such as a cane, crutches, leg brace, or walking boot. This policy has been in effect for many years and is designed to protect employees who must rely on an assistive device for safe ambulation due to balance or strength deficits or other mobility impairments from the variables on the plant floor. As a result of the myriad risks, employees cannot safely work in, or walk into or through, S&C's manufacturing production areas while utilizing an assistive device, and thus during all relevant times S&C has not allowed an employee to be in such areas while using an assistive device. Rascher's duties required him to walk into and through these production areas.

22. An employee taking a prescribed narcotic pain medication or other medication that affects mental or physical function, due to an acute injury, is not cleared to return to work by S&C's Health Services department if the employee either (1) has taken such medication within 4 (four) hours of the start of the work shift, or (2) is under the influence of any such medication during any work hours. In addition, an employee who has been on a disability leave is not cleared to return to work by Defendant's Health Services department until the employee is completely off narcotic medications (and other medications that affect mental or physical function) or has transitioned to non-narcotic / non-impairing medication during working hours.

23. If Rascher's troubleshooting duties on S&C's manufacturing floor and his collaborative work with S&C's product specialists, more junior designers, and assembly personnel were not performed, the consequences would include production delays and S&C's inability to build custom products in an efficient, cost-effective, and timely manner in accordance with customer specifications, and failure to meet promised delivery dates on customers' orders.

24. On September 2, 2014, Rascher started a medical leave of absence, which originally was scheduled to run through October 6, 2014. His last day worked before the leave was August 29, 2014. Rascher's leave was extended multiple times, first under S&C's STD pay practice and ultimately under S&C's LTD benefits policy. His approved leave ended on August 29, 2015. He did not submit any medical return-to-work releases before his maximum 12-month leave ended on August 29, 2015.

25. Attached as Exhibit I is a true and correct copy of the S&C Health Services progress notes for Rascher between September 2014 and September 2015, which contain contemporaneously kept notes of Health Services employees relating to their communications and interactions with Rascher. (This document was marked as Deposition Exhibit 11 in Kathleen Clawson's deposition held on March 13, 2019.) These notes are records kept in the course of S&C's regularly conducted business activity, and were made and kept in S&C's Health Services department's files in the regular course and practice of S&C's business. These notes reflect that S&C's occupational health nurses had numerous conversations with Rascher and sent him letters dated September 10, 2014, October 3, 2014, and December 1, 2014. These notes reflect that on November 13 and December 1, 2014 and February 18, 2015, Rascher spoke with Sophia Quang, an occupational health nurse at S&C. Among other things, during both the November 13 and December 1, 2014 conversations, Quang discussed with Rascher that S&C's return-to-work policies required him to provide a written return-to-work release from his doctor before he could return to work.

26. Attached as Exhibit J is a true and correct copy of the letter dated September 10, 2014 from Sophia Quang to Rascher.

27. Attached as Exhibit K is a true and correct copy of the letter dated October 3, 2014 from Sophia Quang to Rascher.

28. Attached as Exhibit L is a true and correct copy of the letter dated December 1, 2014 from Sophia Quang to Rascher. (This document was marked as Deposition Exhibit 50 in Rascher's deposition held on December 12, 2018.)

29. In addition to the communications between Rascher and occupational nurses in S&C's Health Services department, communications also took place between Rascher and Marcia Burton, one of S&C's employee benefits professionals, during Rascher's year-long absence from work. Attached as Exhibit M is a true and correct copy of the letter dated January 21, 2015 from Marcia Burton to Rascher. (This document was marked as Deposition Exhibit 51 in Rascher's deposition held on December 12, 2018.)

30. Attached as Exhibit N is a true and correct copy of the letter dated March 11, 2015 from Marcia Burton to Rascher. (This document was marked as Deposition Exhibit 56 in Rascher's deposition held on December 12, 2018.)

31. Attached as Exhibit O is a true and correct copy of the letter dated July 30, 2015 from Marcia Burton to Rascher. (This document was marked as Deposition Exhibit 57 in Rascher's deposition held on December 12, 2018.)

32. Attached as Exhibit P is a true and correct copy of the letter dated August 20, 2015 from Marcia Burton to Rascher. (This document was marked as Deposition Exhibit 59 in Rascher's deposition held on December 12, 2018.)

33. Attached as Exhibit Q is a true and correct copy of a "Retirement Checklist" dated August 20, 2015, created by Marcia Burton for and during her August 20, 2015 in-person

meeting with Rascher. (This document was marked as Deposition Exhibit 58 in Rascher's deposition held on December 12, 2018.)

34. Attached as Exhibit R is a true and accurate copy of a document titled "Job Titles, Qualifications, and Duties for Detailers and Designers," which provides a description of the job duties for various positions, including the position of Principal Designer which was held by Rascher. (This document was marked as Deposition Exhibit 38 in Rascher's deposition held on December 12, 2018.)

35. Attached as Exhibit S is a true and accurate copy of an application submitted to MetLife to approve Rascher for Long-Term Disability benefits. (This document was marked as Deposition Exhibit 53 in Rascher's deposition held on December 12, 2018.) The "Employee's Job Description" page (labeled S&C282) was completed by Chris Roman, who was Rascher's direct supervisor. (This single page was marked as Deposition Exhibit 39 in Rascher's deposition held on December 12, 2018.) The "Employee Statement" pages (labeled S&C285 and S&C295) were completed by or on behalf of Rascher.

36. Attached as Exhibit T is a copy of the contemporaneous notes Dr. Rajeev Khanna, M.D. wrote during the time he met with Rascher on August 31, 2015, to evaluate Rascher's ability to return to work and perform essential job functions. (This document was marked as Deposition Exhibit 62 in Rascher's deposition held on December 12, 2018.)

37. Rascher was terminated from employment upon expiration of the maximum one-year leave of absence because he did not submit any medical return-to-work release by the time his approved leave of absence expired on August 29, 2015, and S&C's Health Services department determined as of August 31, 2015 that he was not able to perform the essential functions of his job, with or without accommodations, because he could not function

independently within S&C's large manufacturing complex primarily due to his obvious significant difficulty ambulating, balance deficits, and trouble with sit-to-stand transfers due to lower extremity weakness. Although the determination that Rascher could not return to work was made on August 31, 2015, the effective date of his termination was August 29, 2015, because that was the date his maximum 12-month leave of absence ended.

38. On September 2, 2015, S&C's human resources department initiated the process to complete a Termination Notice for Rascher – the official human resources record of an employee's separation from employment. After receiving a voice message from Rascher on September 4, 2015 stating he would be submitting doctors' return-to-work notes, S&C's human resources department suspended its processing of Rascher's Termination Notice. After S&C's Health Services department reviewed and considered the documents Rascher submitted on September 8, 2015, S&C's human resources department completed processing Rascher's Termination Notice. The effective date of Rascher's separation from employment was August 29, 2015, in accordance with S&C's policy and S&C's repeated communications to Rascher.

39. Attached as Exhibits U, V, W, and X, are true and correct copies of return-to-work doctors' notes Rascher submitted to S&C on September 8, 2015. (These documents were marked as Deposition Exhibits 65, 67, 68, and 69 in Rascher's deposition held on December 12, 2018.)

40. Attached as Exhibit Y is a true and correct copy of the August 26, 2015 Illinois Bone and Joint Institute physical therapy notes for Rascher which S&C received in September 2015 and which were kept since then in S&C's Health Services department's files in the regular course and practice of S&C's business. (This document was marked as Deposition Exhibit 9 in Kathleen Clawson's deposition held on March 13, 2019.)



41. Attached as Exhibit Z is a true and correct copy of emails sent by and between Kathleen Clawson and Dr. Khanna on September 9, 10, and 11, 2015 regarding the decision not to clear Rascher to return to work. (A portion of this email thread was marked as Deposition Exhibit 6 Kathleen Clawson's deposition held on March 13, 2019.)

42. Attached as Exhibit AA is a true and correct copy of the letter dated September 14, 2015 from S&C's Health Services department to Rascher. (This document was marked as Deposition Exhibit 70 in Rascher's deposition held on December 19, 2018.)

I declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct to the best of my knowledge, information, and belief.

Executed this 1st day of August, 2019, at Chicago, Illinois.

  
Donna M. Baggett

# Exhibit B

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
PLAINTIFF and RICHARD )  
RASCHER, Plaintiff, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
S&C ELECTRIC COMPANY, )  
 )  
Defendant. )

No. 1:17-CV-6753

The videotaped deposition of RICHARD RASCHER,  
called by the Defendant for examination, taken pursuant  
to notice and pursuant to the Federal Rules of Civil  
Procedure for the United States District Courts  
pertaining to the taking of depositions, taken before  
Kim Kocimski, Certified Shorthand Reporter, at 200 West  
Madison Street, Suite 3000, Chicago, Illinois,  
commencing at 9:08 a.m. on December 12, 2018.

1 APPEARANCES:

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On behalf of the Defendant.

ALSO PRESENT: Robin Kim (videographer)

\* \* \* \* \*

1 WHEREUPON:

2 RICHARD RASCHER,  
3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. BRENNEMAN:

7 Q. Good morning, Mr. Rascher. Can you state your  
8 name?

9 A. Richard Rascher.

10 Q. Can you spell your last name?

11 A. R A S C H E R.

12 Q. Have you ever had your deposition taken  
13 before?

14 A. No, I haven't.

15 Q. Okay. Let me explain about what we will be  
16 doing today. As you know, I represent S&C Electric  
17 Company. I'm going to be asking you a series of  
18 questions. And you can see there's a court reporter  
19 here who's transcribing everything that everyone here  
20 says today. You'll be expected to answer my questions  
21 to the best of your ability and please do so audibly  
22 rather than a gesture or -- or such as a shrug of the  
23 shoulders or a nod of your head because it's important  
24 that we capture everything that is -- is stated today.

1 did mention building 12-A; is that correct?

2 A. Yes.

3 Q. What happened in building 12-A that related to  
4 your work?

5 A. 12-A is where the -- after our drawings were  
6 finished and the parts were fabricated and it went to  
7 shelves in that building, the assemblers would pull the  
8 parts and assemble it. They would put it on skids and  
9 shipping would remove it to the shipping area.

10 Q. Okay. So building 12 is at least one of the  
11 places that actually manufactured some of the parts that  
12 you were designing, correct?

13 A. Would use the parts that we designed.

14 Q. Would use the parts that you were designing?

15 A. Yes.

16 Q. Okay.

17 A. The fabrication areas were throughout the  
18 facility, building -- S&C Electric is not just a little  
19 small brick. It's -- It's -- It goes from Pratt --  
20 Pratt Avenue to Devon and the whole length of Ridge  
21 there. So fabrication by these machines and so forth  
22 took up a lot of buildings.

23 Q. Yeah.

24 In fact, was --

(Short interruption.)

BY MR. BRENNEMAN:

Q. Is the -- Is the S&C industrial complex there on Ridge, do you know how many acres it -- it takes up?

A. No, I do not.

Q. Would 45 or 46 sound about right?

A. I can't answer that.

Q. Okay. But as you said, it runs from Pratt on the north to --

A. Devon.

Q. -- Devon on the -- on the south and the full length of Ridge on the -- on the west and the railroad tracks on the east, correct?

A. Right.

Q. And would you go to building 12-A as part of your duties as principal designer?

A. Yes, I would.

Q. And what did you do in building 12-A?

A. If there was difficulty assembling our parts, I would go down there and see what the problem was and assist them in making -- not assisting, I would tell them what parts needed to be modified in order to make the arrangement workable.

Q. You were pretty good at that, weren't you?

1 A. I was very good at that.

2 Q. In fact, were you viewed as basically the  
3 resident expert at S&C on handling that kind of work?

4 A. People had called -- Other employees had  
5 called -- said that's what I was.

6 Q. But you're too modest to take -- take the  
7 title, is that what you're telling me?

8 A. I didn't gloat over that type of stuff. I  
9 thought I was doing the job I was being paid for.

10 Q. Who do you recall interacting with in building  
11 12-A when you would go there to do the things you  
12 described?

13 A. Well, the manager of that or -- was -- I'm  
14 trying to remember his name. It's been a while since  
15 I've dealt with him. He's the -- I don't recall his  
16 name right now.

17 Q. Does Tony -- Is Tony --

18 A. That's it.

19 Q. -- Savino (phonetic) one of the people?

20 A. Yeah, Tony Savino.

21 Q. Okay. So just so we're clear, you -- when --  
22 on occasions when you would go to building 12-A, you  
23 would interact with Tony Savino who was a manager in  
24 that area that you described?



1 A. That's right.

2 Q. How frequently in your job would you go to the  
3 manufacturing plant floor?

4 A. It depends on the problems that we had, how  
5 often I would be down there. Sometimes it could be  
6 every day. And Tony would call me up on the phone and  
7 ask me to come down and solve a problem and I would work  
8 with his trouble workers there to see what the problem  
9 was and what we could do to solve it.

10 Q. Is --

11 A. And sometimes it took two of us to figure out  
12 how to do it. Mr. Roman would join me and we would come  
13 up with a solution.

14 Q. Mm-hmm. Help me understand the kinds of  
15 problems and solutions you would come up with when you  
16 did that.

17 Was it changing a way a process was done or  
18 changing a part or refabricating something? What was it  
19 exactly?

20 A. Sometimes it -- it would take a -- a new part  
21 to be fabricated to make this design work.

22 Q. What about other examples?

23 A. Sometimes we would say this wasn't assembled  
24 properly and this is how it should be assembled.

1 Q. So the drawings were correct but the  
2 assemblers on the floor weren't following your  
3 instructions?

4 A. That happened on occasion.

5 Q. And that would be an example of going down to  
6 the floor to straighten them out?

7 A. Assist them not straighten them out.

8 Q. Okay.

9 A. I did not force them to do something. I would  
10 make suggestions. I worked well with -- That's why Tony  
11 appreciated me coming down and assisting because he knew  
12 I would have a solution.

13 Q. Did you work with blueprints in your job as  
14 principal designer?

15 A. They were CAD drawings.

16 Q. So that's computer-aided or a computer program  
17 of the drawings?

18 A. Yes.

19 Q. Okay. Was there ever a point when you had  
20 actual paper blueprints that you used?

21 A. Yes.

22 Q. When did that end or -- or if it did end,  
23 did -- what -- what -- during what period of time were  
24 you using the paper?

1           A.     I guess I need a definition of what you mean  
2 by blueprints.

3           Q.     Well -- Okay. Good question.

4                     Apart from a computer program or computer  
5 data, computer-stored information, were there any actual  
6 hard copies of blueprints that you used that you had  
7 stored in binders or file cabinets, for example?

8           A.     Yes. We had file cabinets full of that type  
9 of drawings and they were also old drawings that were  
10 scanned into the system that you could view on a -- on a  
11 computer.

12          Q.     Okay. Did -- Let's say in the last couple of  
13 years of your employment with S&C, did you have the need  
14 to refer to or use the actual paper hard copies of the  
15 blueprints?

16          A.     Yes.

17          Q.     Okay. And where were -- where were those  
18 stored in connection with your cubicle?

19          A.     Well, if they were older drawings, blueprints  
20 of stuff that went -- got destroyed, I would say,  
21 because of everything going onto the computer system, a  
22 file cabinet in our office had a lot of old drawings --  
23 copies of old drawings that the print room did not have.  
24 And on occasion the print room would ask me for that

1 drawing and I would find it.

2 I was the keeper of old stuff. I had file  
3 cabinets full of stuff; 53 years will accumulate a lot  
4 of information. And a lot of people would come to me  
5 including the engineers and see if I had a copy of this  
6 or the vintage of the drawings of -- of the circuit  
7 switchers dates back to when I first started working for  
8 S&C back in 1962.

9 And we -- the -- the circuit switcher has  
10 progressed to different designs from type A to type G to  
11 mark 2, mark 3, mark 4, mark 5, the vintage. And I  
12 would keep some of these older drawings, and people from  
13 the other departments would come to me and ask me if I  
14 had an -- an older version because the original of the  
15 older version got destroyed.

16 And it was also S&C Canada that took over a  
17 lot of our product line and they would -- we would send  
18 drawings up to them for that, for fabricating that  
19 product line. And somehow Fidel Batish (phonetic) would  
20 call me up and ask me what -- if I had a copy of that  
21 drawing and I did have a copy of it, because somehow  
22 theirs -- the drawings that we used to fabricate here or  
23 draw and were sent up to Canada to be -- because of that  
24 product line, they stored it in a facility someplace and

1 engineering in the original lab building upstairs. He  
2 would come over and ask me if I had some old drawings  
3 pertaining to those and sometimes I had them and  
4 sometimes I didn't.

5 Q. At your -- At your workstation, how much of  
6 the day did you spend sitting, typically?

7 A. The -- The day that I spent doing what?

8 Q. Sitting, just seated?

9 A. Sitting?

10 Q. At your workstation.

11 A. I would say three-quarters of a day.

12 Q. And your day was how many hours?

13 A. I started at 7:30 in the morning and I was  
14 lucky if I left by 5:00.

15 Q. In addition to sitting, did you -- did you do  
16 standing as part of your job?

17 A. Yes. And when I walked over and assisted a  
18 coworker, I didn't sit down next to them, I would stand  
19 there and say that you should do this and this, and then  
20 they would do that, and then they'd come back and ask me  
21 if it was right. I did walk in my office.

22 Q. Okay. When -- The example you just gave as  
23 assisting a coworker, are you referring to other  
24 designers --

1 A. Designers, yes.

2 Q. -- in Department 712?

3 And where were those designer's workstations  
4 located in relation to yours?

5 A. Probably out to your lobby, the length of this  
6 room; each one had a cubicle that had an L-shape desk  
7 with a file cabinet on top of it where I kept all the  
8 old price sheets.

9 Q. Can you approximate the number of feet or  
10 yards that you're describing?

11 A. Is that important?

12 Q. I'm just curious. I mean, we could --

13 A. I would say the length of this room, what- --  
14 whatever that measures out to be.

15 Q. Okay. And then would it also be correct that  
16 you walked and did standing when you were engaging in  
17 these activities on the -- on the production floor, for  
18 example, in building 12-A?

19 A. Yes.

20 Q. You had to walk to get there, correct?

21 A. I walked down there. I walked down -- I think  
22 it's almost 20 steps going down and then walk over to  
23 building 12-A, which was on the same level.

24 Q. So the 20 steps that you're referring to, is

1 that the number of steps that you at least are  
2 approximating from the ground level of building 12 to  
3 the mezzanine where your office was?

4 A. Yes.

5 Q. Okay. And then building 12-A was a nearby  
6 building to --

7 A. Yes, it was.

8 Q. -- building --  
9 Okay.

10 MR. BRENNEMAN: Let's mark this as 37.

11 (Rascher Deposition Exhibit No. 37  
12 marked as requested.)

13 BY MR. BRENNEMAN:

14 Q. Mr. Rascher, you've been handed what's been  
15 marked as Defendant's Deposition Exhibit 37. This has  
16 Bates pages S&C 358 through 364.

17 Is this a copy of a performance appraisal you  
18 received at S&C?

19 A. Yes, it is.

20 Q. Is this the last one that you received as an  
21 employee there?

22 A. Yes, I believe this is it.

23 Q. And is the compensation rate in that box about  
24 two-thirds of the way down on the first page your salary

1 Q. Do you know what Mr. Roman was referring to as  
2 "hot jobs"?

3 A. Short turnaround jobs that had to be done  
4 quickly.

5 Q. And did those require -- Well, give me an  
6 example of one of those jobs when you were at S&C, what  
7 it -- what it required you to do.

8 A. I guess, the one word to -- not guess -- it  
9 was put out fires. By fires, I mean that the customer  
10 was the -- wanted the switch now not yet -- not  
11 tomorrow, they wanted it now. And we were required to  
12 put forth our best design and -- quickly and everybody,  
13 manufacturing and so forth, product specialists, do  
14 their best to accommodate the customer's request.

15 Q. And so did that require you to be  
16 communicating with, as you say, the product specialists,  
17 the people on the manufacturing floor, those sorts of  
18 things?

19 A. I would communicate with them, yes. I  
20 wouldn't use the word, you know -- You better get this  
21 done now, you know. I would say the customer's  
22 requested this ship -- this ship by a certain date and  
23 we -- everybody at S&C had to do their best to make sure  
24 that was accomplished.



1 Do you see that?

2 A. Yes.

3 Q. What sorts of safety issues or safety  
4 conscious efforts did you make at S&C?

5 A. There was a program that S&C had, people  
6 should suggest things that are not -- that somebody  
7 could get hurt doing. And so there was a program that  
8 they had if you made suggestions of some sort, you got a  
9 free -- maybe a free coffee or free sweet roll or  
10 something at lunchtime and you were rewarded for giving  
11 your thoughts for something that needed some attention.

12 Q. And you made some of those suggestions?

13 A. Yes, I did.

14 Q. Do you recall any particular issue that you  
15 made a suggested solution for?

16 A. Let's see. Offhand, no. I -- It was just if  
17 you saw a problem, you would make a suggestion. You  
18 filled out a form and -- or sometimes I didn't even go  
19 through forms stage. I would make a suggestion to the  
20 floor supervisor or somebody that something needed some  
21 attention before somebody got hurt.

22 Q. Did any of your suggestions have to do with  
23 any of the activities on any of the -- any of the  
24 production areas of S&C?

1 A. Yes.

2 Q. Give me an example.

3 A. A clutter of the aisles would be one.

4 Q. To eliminate the obstacles in the --

5 A. Right.

6 Q. -- manufacturing area?

7 Okay. And why would that have helped safety?

8 A. If a -- If something was extending into the  
9 pathway or the aisles and somebody would walk by and  
10 trip on it, it -- it would be a preventive by suggesting  
11 something be done to eliminate this problem.

12 Q. There are lots of heavy equipment on the  
13 manufacturing floor at S&C?

14 A. Yes, there is.

15 Q. Including in building 12-A?

16 A. Yes, there is.

17 Q. A lot of moving parts?

18 A. Yes, there is.

19 Q. Are there forklifts going through the area  
20 from time to time?

21 A. Yes, there --

22 Q. Other kinds of indoor vehicles, moving parts,  
23 and things like that?

24 A. Yes.

1 Q. Are some of the products that are being  
2 manufactured -- Let's just talk about building 12-A, for  
3 example. Are some of those products as big as this  
4 table?

5 A. The products for the circuit switcher that go  
6 into substations usually, there are three phases. Yes,  
7 they would be the size of -- the length of one, two --  
8 three of your tables here.

9 Q. Three of these tables?

10 A. I'm talking about the -- the length of it.  
11 And then there would be insulators mounted on there,  
12 sometimes either three or four, and then the live parts  
13 which would be the -- where the current path would go  
14 through when these switches are located in a substation.  
15 And then they have -- they have braces on them to  
16 prevent them from tilting over, and they -- the shop  
17 people mount them to wooden skids and the Jeep drivers  
18 would push those wooden skids across the floor to  
19 shipping.

20 Q. In addition to the moving vehicles and the  
21 other things you described, were there cranes or are  
22 there cranes and lifting equipment on the production --  
23 in the production areas --

24 A. Yes. There's --

1 Q. -- that you referred to?

2 A. -- cranes for -- that are mounted to the  
3 ceiling, I-beams.

4 Q. And those cranes are lifting some of these  
5 large pieces of equipment --

6 A. Yes, they are.

7 Q. -- and taking them from one place to other?  
8 Okay.

9 Is that true?

10 A. That's correct.

11 MR. BRENNEMAN: Ready for 38.

12 (Rascher Deposition Exhibit No. 38  
13 marked as requested.)

14 BY MR. BRENNEMAN:

15 Q. Before we look at that, Mr. Rascher, do you  
16 know how many buildings are on the campus at S&C?

17 A. Well, there's more than building 12 and 12-A.  
18 So a number of buildings that exist on this campus, I  
19 cannot answer that.

20 Q. Is it --

21 A. I don't know.

22 Q. -- a couple of dozen?

23 A. Couple dozen, more than 12.

24 Q. I'm just asking if it's -- how many -- how

1           A.     Other departments had principal designers  
2 also.

3           Q.     Do you think this Exhibit 38 is an accurate  
4 description of the various duties of the various job  
5 titles in your department?

6           A.     Could you repeat that?

7           Q.     Sure.

8           MR. BRENNEMAN: Do you want to just read it back?

9                               (Record read as requested.)

10          BY THE WITNESS:

11          A.     Yes.

12          Q.     Still looking at the last page, which is  
13 page 472 --

14          A.     What was the question?

15          Q.     I haven't -- I haven't given you one yet.

16          A.     Oh.

17          Q.     (Continuing.) -- this -- the third bullet  
18 there says: Serves as teacher and trainer frequently  
19 for less experienced designers.

20                   Is that a reference to what you described  
21 earlier about your -- your teaching and training duties  
22 for other designers in the department?

23          A.     Yes.

24          Q.     And then two bullets down, it -- it says:

1     Reviews the technical work of others and frequently  
2     participates in discussions to solve unusual technical  
3     problems.

4             Was that also part of what your job was?

5             A.     Yes.

6             Q.     You -- You testified that Chris- --  
7     Christopher Roman was your -- was your manager. How  
8     long had he been your manager before you separated  
9     from -- from S&C, approximately?

10            A.     When Ted Gutman retired, which was ...

11            Q.     More than 15 years before you separated?

12            A.     I do not know the exact date that Chris took  
13     over our department.

14            Q.     Was it at least ten years before you separated  
15     from S&C?

16            A.     Yes, I would agree to that.

17            Q.     All right.

18            MR. BRENNEMAN: Let's mark this as 39.

19                                 (Rascher Deposition Exhibit No. 39  
20                                 marked as requested.)

21     BY MR. BRENNEMAN:

22            Q.     Mr. Rascher, you've been handed what's been  
23     marked as Defendant's Deposition Exhibit 39, which is a  
24     single page labeled S&C 282.

1 Do you know what this is?

2 A. I remember seeing it, yes.

3 Q. When did you see this?

4 (Witness viewing document.)

5 BY THE WITNESS:

6 A. I remember it says -- Chris Roman filling out  
7 a form like this. We were evaluating the efforts that  
8 were required -- the efforts that -- that you did, what  
9 you used your -- your hands for, your feet for. We had  
10 safety meetings every now and then also that -- we saw  
11 movies showing you the proper way to lift things.

12 And to go more detailed on this, all I can  
13 say, I saw the form.

14 Q. Did -- Did you help Chris Roman fill out this  
15 form?

16 A. I don't recall.

17 Q. Did -- Did Chris Roman confer with you when --  
18 while he was filling out this form?

19 A. I can't answer that clearly.

20 Q. You don't remember?

21 A. No.

22 Q. Or why can't you answer that?

23 A. I don't remember.

24 Q. Do you recall whether this form was being

1 filled out as part of your long-term disability  
2 application?

3 A. I don't know.

4 Q. Do you agree that your job required about five  
5 to six hours of sitting per day? I'm looking at the  
6 form.

7 A. Yes.

8 Q. Okay. And about one to two hours of standing  
9 per day?

10 A. What's included in -- in standing? I mean,  
11 standing to go to the cafeteria, standing to use the  
12 washroom? I'm not trying to get sarcastic here but I  
13 just don't understand where you're going with this.

14 Q. Well, I think -- And I didn't fill out the  
15 form, obviously, but I think it's trying to describe  
16 your actual duties as opposed to your lunch break. So I  
17 would not include going to the cafeteria, but while  
18 you're actually performing work, would -- would your  
19 duties have entailed about one to two hours of standing  
20 per day?

21 MR. FIORITO: I'm going to object to the form.

22 BY MR. BRENNEMAN:

23 Q. You can answer.

24 A. I can?



1 Yes.

2 Q. Okay. How much walking in the course of a day  
3 did you do, typically, as far as the amount of time  
4 spent walking?

5 A. 45 minutes, an hour. It depends what -- if I  
6 was walking to the shop to solve a problem or if I was  
7 walking to assist a fellow designer.

8 This was filled out by Mr. Roman in January  
9 of 2015. At that time, I was not back working at S&C.  
10 I was on a short-term disability.

11 Q. If you look at the bottom of this form, it's  
12 actually No. 21, it says: Be around moving equipment  
13 and/or machinery; and it looks like Mr. Roman checked  
14 yes.

15 Do you agree that your job entailed being  
16 around moving equipment and/or machinery?

17 A. Yes.

18 Q. And did your job involve -- I think we already  
19 talked about this a little bit, but did your job involve  
20 climbing stairs?

21 A. To get to the office, yes.

22 To get here today, I took a train from Mount  
23 Prospect to the -- to the Metra station at Madison  
24 Street not the Union Station the other one.

1 Q. Ogilvie?

2 A. And from there, I walked here. So I don't  
3 know where this is going with the word -- I was able to  
4 get around cars that were blocking the -- the streets  
5 here coming here, buses, and so forth. So I guess you  
6 consider that moving equipment.

7 MR. BRENNEMAN: 40.

8 (Rascher Deposition Exhibit No. 40  
9 marked as requested.)

10 BY MR. BRENNEMAN:

11 Q. I'm going to shift gears a little bit,  
12 Mr. Rascher, and start asking you some questions about  
13 some documents that are policies at S&C.

14 You've been handed what's been marked as  
15 Exhibit No. 40 which runs from S&C 459 to 461.

16 Is this the company's Equal Employment  
17 Opportunity policy that was in place when you were  
18 employed?

19 A. I did not have access to a policy bulletin  
20 book. That was only by managers, so I do not know what  
21 was in the policy bulletin book.

22 Q. Did you have access to the company's intranet,  
23 source one?

24 A. When I was not at S&C or before I was --

1 Q. All right. Let's look specifically right now  
2 at MetLife 127. You see in the top third, I would say,  
3 there's -- list any medications prescribed and then  
4 somebody wrote Tramadol 50-milligram tablets. Do you  
5 see that?

6 A. Yes.

7 Q. Were you taking Tramadol in August of 2015 for  
8 pain?

9 A. No, I was not.

10 Q. Were you ever taking Tramadol --

11 A. No.

12 Q. -- or prescribed Tramadol?

13 MR. BRENNEMAN: Did you get an answer?

14 BY THE WITNESS:

15 A. I might have been prescribed it, but -- that's  
16 not the word -- I did not see any results from pain  
17 medicine. Even in the hospital after the operation, I  
18 did not see any -- they gave me some other stuff that's  
19 supposed to put you in la-la land or something and pain  
20 medicine doesn't help me.

21 Q. All right. So it sounds like you were  
22 prescribed some pain medicine, you did take some pain  
23 medicine, but you didn't experience very good results  
24 with it; is that correct?

1 A. Yes.

2 Q. And was that the case in, let's say, July and  
3 August of 2015?

4 A. It -- It says on here date, February 20th of  
5 2015 -- 2015.

6 Q. Well, that's for the date of your surgery, I  
7 believe.

8 A. I'm looking for the date that this form was  
9 filled out.

10 Q. Yeah. Let's turn to the next page and I think  
11 we can help you out on that. Do you see the middle part  
12 of page MetLife 128 where it looks like a physician's  
13 signature block and somebody wrote in 8/11/2015.

14 Correct?

15 A. I'm looking for it. Oh, there, I see it.  
16 Yes.

17 Q. So do you have any reason to -- Strike that.

18 I want to turn back to the prior page, 127.

19 Was it your understanding that as of August 11, 2015  
20 Dr. Jiminez had written out these restrictions for you  
21 that included sitting only two hours intermittently?

22 A. Referring to, it says no lifting, no carrying,  
23 is that -- pushing, pulling, walk, and sitting as ...

24 Q. I'm not sure you're on the same page I am.

1 Q. All right.

2 A. How would I know that?

3 Q. Was one of your PT providers, Crystal?

4 A. Yes.

5 Q. All right. Do you ever recall telling Crystal  
6 on or about August 12, 2015 that you were in pain and  
7 the pain medication wasn't helping?

8 A. If that's what I told her, then it must be  
9 true. But I have told you that pain medicine does not  
10 work on me so I don't take pa- -- pain medicine. I  
11 don't --

12 MS. DORAN: Richard, it's only what you recall.  
13 Okay? That's what he's asking you, if you recall these  
14 statements. That's the simple question.

15 BY MR. BRENNEMAN:

16 Q. Do you recall telling Crystal -- again, the  
17 same physical therapist -- on August 21st, 2015 that you  
18 were in more pain in the lower back region than you had  
19 previously? Do you recall anything like that?

20 A. I don't recall.

21 Q. Is it -- Do you recall telling Crystal on  
22 August 21, 2015 -- and this is a quote from her  
23 record -- "the pain medication doesn't even take the  
24 edge off"? Is that a quote or is that a statement you

1 Was he older than you?

2 A. I believe he is. He doesn't look older than  
3 me. He looks very young.

4 Q. That's because he's working at S&C.

5 MR. FIORITO: Can we get a check on the time?

6 MS. DORAN: How long are we at?

7 BY MR. BRENNEMAN:

8 Q. Do you know if he's still employed at S&C?

9 A. No, I do not know.

10 MR. BRENNEMAN: Okay. How much time do we have?

11 THE COURT REPORTER: It's about -- I have 3:54. So  
12 3:54 and 3:07, we're right at it.

13 (Discussion off the record.)

14 MR. BRENNEMAN: No further questions.

15 MS. DORAN: Okay. I'm going to make a statement on  
16 the record.

17 I have no questions, but on behalf Mr. Rascher  
18 pursuant to the agreed protective confidentiality order  
19 entered in the case, I'm going to designate this  
20 deposition as confidential and subject to the protective  
21 order.

22 And we will waive signature.

23 MR. BRENNEMAN: Waive?

24 MS. DORAN: Yes.

1                   Okay.

2           THE VIDEOGRAPHER:   The time is 5:41.   We're now  
3 going off the record.   This concludes today's  
4 deposition.

5                                   (Witness excused.)  
6  
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# Exhibit C



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-cv-06753
	)	
S&C ELECTRIC CO.,	)	
	)	
Defendant.	)	

The deposition of CHRISTOPHER ROMAN, called by the Plaintiff for examination, taken pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Bridget L. Stone, Certified Shorthand Reporter, at 500 West Madison Street, Suite 2000, Chicago, Illinois, commencing at 10:00 a.m. on the 19th day of March, A.D., 2019.

1 APPEARANCES:

2 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
3 MR. BRADLEY FIORITO  
4 MS. JOETTE DORAN  
5 MR. ETHAN COHEN  
6 500 West Madison Street  
7 Suite 2000  
8 Chicago, Illinois 60661  
9 Phone: (312) 869-8000

10 On behalf of the Plaintiff;

11 FOX, SWIBEL, LEVIN & CARROLL, LLP  
12 MR. STEVEN L. BRENNEMAN  
13 200 West Madison Street  
14 Suite 3000  
15 Chicago, Illinois 60606  
16 Phone: (312) 224-1200  
17 E-Mail: sbrenneman@foxswibel.com

18 On behalf of the Defendant.

19 ALSO PRESENT:

20 Ms. Donna Baggett, S&C Electric

21 \* \* \* \* \*

1 (Witness sworn.)

2 WHEREUPON:

3 CHRISTOPHER ROMAN,  
4 called as a witness herein, having been first duly  
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. COHEN:

8 Q. Could you please state your full name for the  
9 record.

10 A. Christopher Dean Roman.

11 Q. Mr. Rowan, have you ever given a deposition  
12 before?

13 A. I have not.

14 Q. Okay. And are you represented by counsel  
15 today? Do you have your own lawyer?

16 A. No, I do not.

17 Q. Okay. Let me tell you a little bit about just  
18 some of the logistics of how depositions work then.

19 We have a court reporter here today. She's  
20 going to be taking down everything that we say. So it's  
21 important that all of your answers be out loud and  
22 verbal. Please try not to answer with gestures or nods  
23 of the head because that's something that will be hard  
24 for her to take down and could cause some confusion on

1           Q.    All right.  And did you ever have to go to  
2 building 12 or 12A in your work as a designer?

3           A.    Yes.

4           Q.    Okay.  And did the other designers in your  
5 department ever have to go to buildings 12 or 12A?

6           A.    Yes.

7           Q.    Was there a particular place in buildings 12  
8 and 12A that they would go to do their designer work?

9           MR. BRENNEMAN:  Objection to the form.

10          BY THE WITNESS:

11          A.    The -- just the physical location of the  
12 building where the product lines were manufactured --

13          Q.    Okay.

14          A.    -- as there were other product lines that were  
15 also assembled in those buildings, but we did not  
16 support.

17          Q.    Okay.  The locations in -- Was it multiple  
18 locations in those buildings where your products were  
19 manufactured?

20          A.    Yes.

21          Q.    Okay.  And if you think about the time period  
22 of 2013 to 2015, did those locations where your products  
23 were being developed -- or I'm sorry, manufactured stay  
24 the same or did they move from time to time?

1           A.    They were relatively static.

2           Q.    Okay.  And why would you need to go into  
3 buildings 12 and 12A?

4           A.    To support the product line manufacturing  
5 operation.

6           Q.    Okay.  What sorts of things would you do in  
7 those buildings?

8           A.    Primarily go down and talk with assemblers of  
9 the products and/or their supervisors to address any  
10 sort of problems, questions, that they would have with  
11 the special design as it was being fabricated.

12          Q.    And is that -- Let me ask that a slightly  
13 different way.

14                The designers in your department, is that the  
15 work that they would do if they were going to buildings  
16 12 and 12A?

17          A.    That would be one of the reasons they would go  
18 into building -- especially building 12 because there  
19 was vending machine area and that kind of stuff.  So  
20 I'm --

21          Q.    Oh, okay.

22                So --

23          A.    You know, but they -- they would need to go to  
24 various parts of the buildings to support the products.

1           You mentioned earlier in the deposition that  
2   you remembered from review of -- of policy handbooks and  
3   the like that you would have to have a release to return  
4   to work, if you had been off on medical leave.

5           Is -- did -- Am I remembering that right?

6           A.    Yes.

7           Q.    All right.  So do you have any recollection,  
8   just from your familiarity with company policies, that  
9   there was any policy that prohibited working while on --  
10   on prescription painkillers?

11          A.    I don't recall that specifically, no.

12          Q.    Okay.  So let's talk a little bit about  
13   Richard Rascher.

14                So he worked for you from 1993 until he went  
15   on his leave of absence; is that right?

16          A.    Yes.

17          Q.    Okay.  And how would you describe him as an  
18   employee?

19          A.    Very good to exceptional.

20          Q.    What were his main job duties?

21          A.    He would work on what we would refer to as the  
22   front end of the business, reviewing paperwork and --  
23   and other details, such as blueprints potentially that  
24   we -- would be submitted in support of our efforts to

1           Thank you very much for coming in today.

2           THE WITNESS:   You're welcome.

3           MR. COHEN:   Before we let you go, there is one last  
4           thing we want to ask you.

5           The court reporter has been taking down what  
6           we said today.  You have the right, if you want to, to  
7           review the transcript and correct any errors that  
8           have -- may have occurred in the transcription.

9           It's not meant to be an opportunity to revise  
10          your testimony but just to, sort of, check the work of  
11          the court reporter and that's called reserving  
12          signature.

13          And if you don't care to do that, you're not  
14          obligated to do, that that's called waiving signature  
15          and you just, sort of, accept the transcript as it is  
16          prepared.

17          What would you like to do?

18          THE WITNESS:   I should reserve it.

19          MR. BRENNEMAN:  Yeah.

20          THE WITNESS:   Okay.  I'll reserve it.

21          MR. COHEN:   Okay.  Thank you very much.

22                           (Witness excused.)

23

24

# Exhibit D



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	Civil Action
OPPORTUNITY COMMISSION,	)	No.
Plaintiff, and RICHARD RASCHER,	)	1:17-cv-06753
Plaintiff-Intervenor,	)	
	)	Judge Robert
vs.	)	W. Gettleman
	)	
S&C ELECTRIC COMPANY,	)	Magistrate
	)	Judge Maria
Defendant.	)	Valdez

The deposition of DOUG DIETZEN, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Layli Phillips, Certified Shorthand Reporter of the State of Illinois, at 500 West Madison Street, Suite 2000, Chicago, Illinois, on March 15, 2019, at 9:55 a.m.

Reported by: Layli Phillips, CSR, RPR, CRR  
License No.: 084.003900

1 APPEARANCES:

2 For the Plaintiff:

3 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
4 MR. BRADLEY S. FIORITO  
5 MS. DIANE I. SMASON  
6 500 West Madison Street, Suite 2000  
Chicago, Illinois 60661  
(312) 869-8071  
bradley.fiorito@eeoc.gov  
diane.smason@eeoc.gov

7  
8 For the Plaintiff-Intervenor Richard Rascher:

9 JOETTE S. DORAN & ASSOCIATES, P.C.  
10 MS. JOETTE S. DORAN  
2300 Barrington Road, #400  
Hoffman Estates, Illinois 60169  
(847) 490-5309  
joette@joettedoran.com

11  
12 For the Defendant:

13 FOX, SWIBEL, LEVIN & CARROLL, LLP  
14 MR. STEVEN L. BRENNEMAN  
200 West Madison Street, Suite 3000  
Chicago, Illinois 60606  
(312) 224-1200  
sbrenneman@foxswibel.com

16 ALSO PRESENT: Donna Baggett, S&C Electric Company  
17  
18  
19  
20  
21  
22  
23  
24

1 DOUG DIETZEN

2 the deponent herein, called as a  
3 witness, after having been first duly sworn, was  
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. FIORITO:

7 Q. Good morning. Could you state and spell  
8 your name for the record.

9 A. Doug Dietzen, D-o-u-g D-i-e-t-z-e-n.

10 Q. Thank you, Mr. Dietzen.

11 My name is Brad Fiorito. I'm an  
12 attorney for the EEOC, and I'll be taking your  
13 deposition today in this matter.

14 Have you been deposed before?

15 A. No, I have not.

16 Q. Okay. Then let me tell you a little bit  
17 about how things will go today.

18 It's very simple. I'll be asking a  
19 bunch of questions. The other attorneys on this  
20 side of the table may have some questions after I  
21 ask mine. I'll just ask you to answer the  
22 questions.

23 To -- for the -- to keep the record  
24 clean, we need to speak one at a time, and so if

1 designer could use to make their job, one, make it  
2 more efficient, be more productive, and have a  
3 good starting point.

4 Q. Okay. That was very clear. Thank you.

5 He was good at that?

6 A. He was very good at that.

7 Q. Did he do -- did he do any direct  
8 communication with customers?

9 A. I don't know for sure. I imagine it  
10 wouldn't be out of the realm. He was -- primarily  
11 would have been talking to the product specialist  
12 and to our outside sales team, but it would be  
13 within his scope of responsibilities if a customer  
14 was on a call that he would participate in that  
15 and communicate directly with the customer.

16 Q. But the customers had other primary  
17 contacts within S&C?

18 A. Yes. Their primary would be the outside  
19 sales or the product specialist.

20 Rick would also be involved if -- once  
21 we had the order and the customer wanted to change  
22 something, there would be work orders that were  
23 processed to describe what that change was, and he  
24 would, again, be in the middle of that because he

1 would look at the feasibility of the change, the  
2 scope of the change, if it affected our bills of  
3 material, if it affected our drawings, if it could  
4 potentially impact our lead time and the schedule  
5 date; he would be involved in that.

6 Q. Did he do any assembly of the product?

7 A. Not direct assembly, no.

8 Q. What do you mean by "not direct  
9 assembly"? Was there indirect assembly he was  
10 doing? I'm not quite understanding.

11 A. No. He would not be part of the  
12 assembly process.

13 In his role, he may have to go to the  
14 shop floor if there was a question from the shop  
15 that came up and say they are really having  
16 trouble building this unit or something doesn't  
17 look right, Rick might go down to the floor, and  
18 he might either -- he might get hands on with it,  
19 but it would be more in an indirect role, he might  
20 guide somebody to do it.

21 So that's what I meant by he wouldn't be  
22 part of the typical assembly operation.

23 Q. Okay. So he's not inserting Tab A into  
24 Slot B?

1           A.       Concrete.

2           Q.       Concrete floor.   Okay.

3                   And what would have been the distance  
4       from Rich's desk to the production floor?

5                   MR. BRENNEMAN:   Objection to the form.

6       BY MR. FIORITO:

7           Q.       You can answer.

8           A.       There would be stairs immediate -- you  
9       know, within close proximity to the exit from his  
10      office.   That would lead into building -- the  
11      production area of Building 12.

12                   And then to get to 12A, it's probably  
13      another 150 feet to the north to enter Building  
14      12A.   And then 12A is a large manufacturing  
15      building.

16           Q.       And what is the distance between  
17      Richard's desk at that time and the staircase that  
18      you're thinking of?

19           A.       So the -- you'd have to pass the  
20      stairway to get to the restroom, so it's less than  
21      50 feet.

22           Q.       Okay.   Do you know how often Rich had to  
23      visit the production floor as part of his job?

24           A.       I don't know on a -- I can't give you a

1 figure. It would have been somewhat routine.  
2 With his position as being an experienced  
3 designer, if the assembly area was having  
4 difficulty with anything that was going through  
5 the shop, he would have been a primary contact,  
6 and since the gear -- the equipment that we're  
7 talking about is large, it's not something that  
8 can be brought into an office area, it would  
9 require that the design and engineering team goes  
10 down to provide that consultation.

11 So, again, I don't know how -- I can't  
12 give you a number, but it would have been routine,  
13 my guess several times a week.

14 Q. Okay. But not daily?

15 A. Could be daily. Depends upon how -- it  
16 depends.

17 Q. Sure.

18 A. There's no set schedule. But if they  
19 have problems, it could be multiple times a day.

20 Q. And problems aren't predictable. Okay.

21 A. No.

22 Q. When Richard did visit the production  
23 floor for the circumstances you're describing,  
24 about how long would he stay there?

1           A.       Or anybody else.

2           Q.       Okay.  Were there parts of Rick's job  
3 that could have been performed at his home?

4           A.       Rick's primary role, as I described  
5 earlier, was direct communication with the  
6 production specialists, the designers, and the  
7 shop floor personnel.  It often involved looking  
8 at specific documents, drawings, physical parts,  
9 so it would be to me not practical that he could  
10 perform his job from anywhere but the office area.

11          Q.       What parts of what you described just  
12 now would be only performable at the work site as  
13 opposed to home?

14                 MR. BRENNEMAN:  Can you read that back.

15                         (Whereupon, record was read as  
16 requested.)

17          A.       Specifically he would not be able to  
18 look at production gear that's being built on the  
19 floor.  That would not be possible.

20          Q.       What else?

21          A.       He could not look at a designer's work  
22 station or the drawings that are in front of them  
23 to provide comment.

24                 He could not look at the product



1 resources reach out to you in that regard?

2 A. Again, I don't have any specific  
3 incidence when that happened.

4 If you're asking me could it happen, I  
5 wouldn't find it out of the ordinary if HR called  
6 me and asked me for my opinion on something that's  
7 a direct report.

8 Q. Okay.

9 A. I don't recall any specific instances of  
10 that.

11 Q. And you don't recall any with respect to  
12 Mr. Rascher? In fact, I think you mentioned you  
13 weren't contacted by human resources with respect  
14 to Mr. Rascher, correct?

15 A. Not to my recollection.

16 MS. DORAN: Okay. All right. I think  
17 that's all I have.

18 MR. BRENNEMAN: We'll reserve.

19 THE REPORTER: Do you want to order?

20 MR. FIORITO: Yeah, we'll order it now.

21 THE REPORTER: Do you want a copy?

22 MR. BRENNEMAN: Yes.

23 (Whereupon the deposition  
24 adjourned.)

# Exhibit E

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-cv-06753
	)	
S&C ELECTRIC CO.,	)	
	)	
Defendant.	)	

The deposition of ANTHONY SAVINO, called by the Plaintiff for examination, taken pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Bridget L. Stone, Certified Shorthand Reporter, at 500 West Madison Street, Suite 2000, Chicago, Illinois, commencing at 2:30 p.m. on the 19th day of March, A.D., 2019.

1 APPEARANCES:

2 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
3 MR. BRADLEY FIORITO  
4 MS. JOETTE DORAN  
5 MR. ETHAN COHEN  
6 500 West Madison Street  
Suite 2000  
Chicago, Illinois 60661  
Phone: (312) 869-8000

7 On behalf of the Plaintiff;

8 FOX, SWIBEL, LEVIN & CARROLL, LLP  
9 MR. STEVEN L. BRENNEMAN  
200 West Madison Street  
Suite 3000  
Chicago, Illinois 60606  
10 Phone: (312) 224-1200  
E-Mail: sbrenneman@foxswibel.com

11 On behalf of the Defendant.

12 ALSO PRESENT:

13 Ms. Donna Baggett, S&C Electric

14 \* \* \* \* \*

(Witness sworn.)

WHEREUPON:

ANTHONY SAVINO,  
called as a witness herein, having been first duly  
sworn, was examined and testified as follows:

EXAMINATION

BY MR. FIORITO:

Q. Hi.

Can you please state and spell your name for  
the record.

A. My name is Anthony Joseph Savino. It's  
A N T H O N Y Joseph, S A V I N O, Savino.

Q. Okay. Mr. Savino, my name is Brad Fioritto.  
I'm an attorney for the EEOC.

A. Okay.

Q. And I'll be taking your deposition today.  
Have you ever had your deposition taken  
before?

A. I -- I think so once before, maybe a while --  
some -- sometime ago but --

Q. Okay. What was the -- that matter?

A. That was a -- a medical issue.

Q. Was it your medical issue or someone else's?

A. Someone else's.

1 Q. That's pretty much it.

2 There's either --

3 A. Well, yeah.

4 Q. Okay.

5 A. If there's -- if you're in the aisle, you're  
6 in a better safe zone than you are in the work zones.

7 Q. Are there occasions that Rick Rascher would  
8 have come down from his workplace to the production  
9 floor where the reverse could have happened, that people  
10 from the production floor had gone and talked to Richard  
11 instead?

12 A. No.

13 Q. Why not?

14 A. Because he has to see his designs sitting on  
15 the floor.

16 Q. And they can't be moved out of the production  
17 area, none of them?

18 A. The structure's twice the size of this room.

19 Q. Well, that's one structure you're picturing.

20 Are all the structures that are created so  
21 large that they can't be moved?

22 A. Yes. These are huge items that we make.

23 Q. Always, 100 percent of them are?

24 A. 100 percent of them are.

1 Q. Okay. What's the smallest, for example?

2 A. A little more than this room size. Three  
3 times these tables.

4 Q. Okay.

5 A. And a weight of anywhere between 6- to 7,000  
6 pounds.

7 Q. So that's getting up on the --

8 A. No, we're not carrying that upstairs. Sorry.

9 Q. Okay.

10 MR. BRENNEMAN: Come on, Tony. Get on it.

11 BY MR. FIORITO:

12 Q. Have you ever seen anyone in any of the  
13 production areas that you supervise using technology  
14 like an iPhone or an iPad or some sort of video  
15 equipment to videotape a problem so that somebody else  
16 could see it?

17 A. No.

18 Q. Would that be feasible?

19 A. I wouldn't know. It's never been done. I  
20 wouldn't know.

21 Q. Okay. Have you ever investigated whether  
22 something like that would be feasible?

23 A. Nope, no.

24 Q. Are you familiar with anything in the industry

1 down Ridge all the time.

2 BY THE WITNESS:

3 A. Yeah. We -- we have an outside area -- a tree  
4 service company comes in and does it.

5 MS. DORAN: Someday I'll have to stop by and see it  
6 myself.

7 MR. BRENNEMAN: And for the record, they're holiday  
8 lights.

9 MS. DORAN: Oh, okay.

10 All right. Well, I think that is all we have,  
11 Mr. Savino.

12 MR. BRENNEMAN: We are done. No questions.

13 Reserve signature.

14 (Witness excused.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



# Exhibit F

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 1:17-cv-06753
	)	
S & C Electric COMPANY,	)	
	)	
Defendant.	)	

The deposition of MARK LANGE, called by the Plaintiff for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions before MAUREEN A. WOODMAN, a notary public within and for the County of Cook and State of Illinois, at Suite 2000, 500 West Madison, Chicago, Illinois, on the 7th day of June, 2019, at the hour of 10:30 o'clock a.m.

1 APPEARANCES:

2 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

3 BY: MR. BRADLEY FIORITO

4 MS. DIANE SMASON

500 West Madison Street

Suite 2000

Chicago, Illinois 60661

312.869.8098

Bradley.fiorito@eeoc.gov,

Diane.smason@eeoc.gov,

7 Appearing on behalf of the  
8 Plaintiff;

9 JOETTE S. DORAN & ASSOCIATES, P.C.

10 BY: MS. JOETTE S. DORAN

2300 North Barrington Road

Suite 400

11 Hoffman Estates, Illinois 60169

847.462.5993

12 Joette@joettedoran.com,

13 Appearing on behalf of the  
14 Plaintiff-Intervenor,  
Richard Rascher;

15 FOX SWIBEL

16 BY: MR. STEVEN BRENNEMAN

200 West Madison Street

Suite 3000

17 Chicago, Illinois 60606

312.224.1200

18 Sbrenneman@foxswibel.com,

19 Appearing on behalf of the  
20 Defendant.

21 ALSO PRESENT:

22 Ms. Donna Baggett

I N D E X

WITNESS	PAGE
MARK LANGE	
Examination by Mr. Fiorito.....	4-72
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- - - - -

E X H I B I T S

DEPOSITION EXHIBIT	PAGE
Exhibit 1 .....	19
Exhibit 2 .....	20
Exhibit 3 .....	35
Exhibit 4 .....	41
(ATTACHED)	

1 (Witness was duly  
2 sworn.)

3 MARK LANGE,  
4 called as a witness herein, after having been  
5 first duly sworn, was examined and testified as  
6 follows:

7 EXAMINATION

8 BY MR. FIORITO:

9 Q. Could you please state your name for  
10 the record.

11 A. Mark Lange. L-A-N-G-E.

12 Q. Have you been deposed before,  
13 Mr. Lange?

14 A. Yes, but it's been a long time ago.

15 Q. How many times have you been deposed  
16 before?

17 A. One time.

18 Q. What was the occasion of that?

19 A. Discharge case.

20 Q. Was it with your employment at S & C  
21 or somewhere else?

22 A. Somewhere else.

23 Q. How long ago was that?

24 A. Over fifteen years ago.

1 A. Yes.

2 Q. Are all of the important safety  
3 policies at S & C in writing?

4 MR. BRENNEMAN: Objection to form.

5 BY MR. FIORITO:

6 Q. You can answer.

7 A. I would say yes.

8 MR. FIORITO: Mark this as Exhibit No. 3.

9 (WHEREUPON, said  
10 document was marked as  
11 Lange Deposition Exhibit  
12 No. 3 for  
13 Identification.)

14 BY MR. FIORITO:

15 Q. You've been handed Exhibit No. 3. Can  
16 you please flip through each page of this and  
17 let me know when you're done flipping through  
18 if you're familiar with this document.

19 A. Okay.

20 (Brief pause.)

21 BY MR. FIORITO:

22 Q. Are you familiar with the document?

23 A. Yes.

24 Q. Is this one of the documents you

1 Q. What's her position?

2 A. Safety and environmental engineer.

3 She is in my group.

4 Q. What happened to Deb?

5 A. As far as -- she had a knee  
6 replacement.

7 Q. And when did she return to work?

8 A. I don't know the specific date, but  
9 it's been within the last month.

10 Q. Does Deb's work take her into the  
11 manufacturing areas of S & C?

12 A. Not with the cane.

13 Q. Why not?

14 A. Did not allow her on the shop floor.

15 Q. Why not?

16 A. Because that's an expectation that we  
17 don't allow people on the shop floor with  
18 canes, crutches, any medical walking assistive  
19 device.

20 Q. Why not?

21 A. Because in my 38 years of  
22 manufacturing, I've never seen that. My  
23 previous employer, we never did that. Never  
24 allowed it. Too many risks, too many hazards,

1 too many slips, trips and falls potential. And  
2 we would not allow her out on the shop floor.

3 Q. Why is the person with an assistive  
4 device more of a fall risk than anybody else  
5 without an assistive device?

6 A. There's forklift trucks running that  
7 are 5,000-pound pieces of equipment, as you saw  
8 in that one presentation. We have many of  
9 those in operation across the facility, campus.  
10 We have other carts that are transport carts  
11 handling and managing materials, heavy  
12 materials. We have overhead cranes, three-ton,  
13 two-ton, one-ton cranes that lift, move  
14 materials from point A to point B. We have  
15 hand trucks, powered hand trucks. We have  
16 dollies. We have a lot of inherent risks that  
17 even on the floor there might be some uneven  
18 pieces of floor, depending on what areas you go  
19 into. There could be other materials  
20 potentially causing a trip-and-fall hazard,  
21 cords, things like that.

22 Q. So why are those potential risks  
23 greater for someone using an assistive device  
24 to mobilize versus someone who doesn't use one?



1 limitation on assistive devices in the  
2 production environment?

3 A. Just it is a high safety risk.

4 Q. Are there any studies that you've  
5 pointed to about the use of assistive devices  
6 in production facilities that informs your  
7 decision around that?

8 A. In both -- in all of my manufacturing  
9 experience, slips, trips and falls is either  
10 the number two or number three safety-related  
11 incident on a manufacturing site. And that  
12 holds true for all my experience with Energizer  
13 and with S & C.

14 Q. So does S & C conduct any sort of  
15 individualized assessment when a person  
16 presents with an assistive device and wants to  
17 return to work?

18 MR. BRENNEMAN: Objection. Form.

19 THE WITNESS: Through health services.

20 BY MR. FIORITO:

21 Q. What happens through health services?

22 A. Person brings in their restrictions  
23 and health services works with them to either  
24 accommodate or not.

1           A.     It's just a standing policy that we've  
2     always had. I know it's not written, but it's  
3     a standing policy. We don't allow assistive  
4     devices in our manufacturing facility.

5           Q.     How is that standard policy  
6     communicated to people so they know that --

7           A.     Verbally.

8           Q.     When?

9           A.     I don't know.

10          Q.     When was it told to you?

11          A.     When was it told to me?

12          Q.     Yes.

13          A.     I don't know specifically when.

14          Q.     Was it told to you?

15          A.     I was informed of the policy, yes.

16          Q.     By whom?

17          A.     Probably my HSE team.

18          Q.     Just to clarify, you do allow visitors  
19     to use the aisles in the production areas to  
20     visit the production -- to visit the production  
21     building?

22          A.     Yes.

23          Q.     Are there circumstances where visitors  
24     or customers will go beyond those lines?

1 Q. There's not some sort of routine tour  
2 that goes on?

3 A. No.

4 Q. Do any of those tours happen to go to  
5 12-A or 12?

6 A. I don't know.

7 Q. Have you been on one of those tours  
8 with a tour group?

9 A. Not with, no.

10 Q. Okay. And --

11 A. I've been on the AME tour group.

12 Q. Okay. Any others that you remember  
13 besides that one?

14 A. No.

15 Q. Okay. Do the policies with respect to  
16 assistive devices that apply to these tour  
17 groups, are they the same policies that would  
18 apply to employees and customers?

19 A. Yes.

20 Q. Any differences?

21 A. No.

22 Q. The S & C has some motorized carts  
23 that people can ride on, correct?

24 A. Yes.

1 Q. Are those permitted in the  
2 manufacturing environment?

3 A. In the aiseways.

4 Q. Why aren't they allowed past the  
5 aiseways?

6 A. Because you have overhead cranes, you  
7 have hoists, you have equipment running.  
8 They're not allowed into the -- well, really  
9 outside of the --

10 Q. Outside the lines, as people say?

11 A. Yes.

12 Q. Are other motorized vehicles permitted  
13 outside the lines? Are forklifts outside the  
14 line?

15 A. Forklifts sometimes move material  
16 inside of the lines, yes.

17 Q. Are there any other kinds of motorized  
18 vehicles?

19 A. Hand trucks, pull-behind. There's  
20 tuggers that have carts that they pull through  
21 the aiseways with materials.

22 Q. But we're not talking just within the  
23 aisles. These examples you are talking about  
24 right now are also going outside the aisles,

1 correct?

2 A. Hand trucks could go out -- well, when  
3 you say outside the aisles, I mean inside the  
4 work zone. Outside of the aisle, correct. So  
5 we have powered industrial vehicles that are  
6 hand trucks, hand operated. We have just  
7 little trolleys, hand trolleys, non-motorized  
8 that would get pushed -- materials get staged,  
9 moved in and out of the work zones.

10 Q. So these motorized carts stay within  
11 the aisles. Would a person with an assistive  
12 device be permitted to go on one of the  
13 motorized carts into the facility?

14 A. No.

15 Q. Why not?

16 A. I've never seen it. I've never  
17 experienced it. I would not say that this is a  
18 safe practice.

19 Q. What could happen?

20 A. They could fall out of the cart.

21 Q. Like, for example, the person that you  
22 saw wearing a boot, you wouldn't allow that  
23 person to get into the motorized cart?

24 A. We don't allow assistive devices on

1     what safety has wanted to happen with regard to  
2     a particular employee?

3             A.     No.

4             MS. DORAN:   That's all I have.

5             MR. BRENNEMAN:   Reserve.

6             THE COURT REPORTER:   Do you want this  
7     written up?

8             MR. FIORITO:   Can you give us a cost  
9     estimate?

10                             (WHEREUPON, the deposition  
11                             was adjourned at 12:18 p.m.)

# Exhibit G

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION, Plaintiff,	)	
and RICHARD RASCHER, Plaintiff-	)	
Intervenor,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 1:17-cv-06753
	)	
S&C ELECTRIC COMPANY,	)	
	)	
Defendant.	)	
	)	

The discovery deposition of DONNA BAGGETT, called by the Plaintiffs for examination, pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Court pertaining to the taking of depositions, taken before Kelly Ann Potts, Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at 500 West Madison Street, Suite 2000, Chicago, Illinois, on the 26th day of March, 2019, at 10:08 a.m.



A P P E A R A N C E S:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, by  
MR. BRADLEY S. FIORITO  
500 West Madison Street, Suite 2800  
Chicago, Illinois 60661  
(312) 869-8109  
bradley.fiorito@eeoc.gov

Appeared on behalf of the  
Plaintiff, Equal Employment  
Opportunity Commission;

JOETTE S. DORAN & ASSOCIATES, by  
MS. JOETTE S. DORAN  
2300 North Barrington Road, Suite 400  
Hoffman Estates, Illinois 60169  
(847) 462-5993  
joette@joettedoran.com

Appeared on behalf of the  
Plaintiff-Intervenor, Richard Rascher;

FOX SWIBEL, by  
MR. STEVEN L. BRENNEMAN  
200 West Madison Street, Suite 3000  
Chicago, Illinois 60606  
(312) 224-1206  
sbrenneman@foxswibel.com

Appeared on behalf of the  
Defendant.

\* \* \*

1 (Witness sworn.)

2 MS. DORAN: Will you please state your  
3 full name for the record and spell your last name?

4 THE WITNESS: Donna Baggett,  
5 B-a-g-g-e-t-t.

6 MS. DORAN: Let the record reflect  
7 this is the deposition of Donna Baggett taken  
8 pursuant to notice on today's date by agreement of  
9 the parties.

10 Ms. Baggett, I'm going to be  
11 asking you some questions today. If at any time  
12 you don't understand me, please let me know. If  
13 you don't do so, I'm going to assume that you  
14 understood my question and that you're answering in  
15 response. Fair enough?

16 THE WITNESS: Yes.

17 WHEREUPON:

18 DONNA BAGGETT  
19 called as a witness herein, having been first duly  
20 sworn, was examined upon oral interrogatories and  
21 testified as follows:

22 EXAMINATION

23 By Ms. Doran:

24

1           Q           Did you ask her to seek out any  
2 further information with respect to Mr. Rascher?

3           A           No.

4           Q           Did you contact Mr. Rascher's  
5 supervisor to discuss this issue with him?

6           A           No.

7           Q           Did you contact anybody else to  
8 discuss your conversation with Ms. Clawson?

9           A           No.

10          Q           What was the next thing that  
11 transpired that you heard of with respect to  
12 Mr. Rascher wanting to return to work?

13          A           I learned that Mr. Rascher was asking  
14 for the company to consider -- to reconsider,  
15 essentially, the decision that he wasn't able to  
16 return to work and that he was providing or wanted  
17 to provide some doctors' statements. I don't  
18 remember who told me that.

19          Q           Do you recall when that was?

20          A           I don't recall independently, but it  
21 had to be around that September 4th through the 8th  
22 time period.

23          Q           And you don't recall who specifically  
24 contacted you in that regard?

1           A           No, I don't.

2           Q           What was your response?

3           A           That we would do what we always do  
4 when an employee comes forward in such a manner  
5 after a decision has been made, that we would treat  
6 it like an appeal, and we would take his  
7 information and see if the decision should stand or  
8 not.

9           Q           What was the next thing you had heard  
10 with regard to Mr. Rascher wanting to return to  
11 work?

12          A           I don't recall. I know I had more  
13 conversation with Kathleen. I don't recall when it  
14 was.

15          Q           Did you have a conversation with  
16 Kathleen after the doctors' notes releasing  
17 Mr. Rascher to return to work --

18          A           Yes.

19          Q           -- were tendered by him?

20          A           Yes.

21          Q           And what was that conversation with  
22 Kathleen?

23          A           I recall that she felt the doctors'  
24 notes didn't address the deficiencies that she had

1     that correct, that relates to his long-term  
2     disability? It doesn't go to S&C; it goes to  
3     MetLife?

4                     MR. BRENNEMAN: Objection to form.

5     BY THE WITNESS:

6             A         I believe the medical documentation  
7     supporting the need for continuing long-term  
8     disability goes to MetLife and not to S&C.

9     BY MS. DORAN:

10            Q         So MetLife may have a right, pursuant  
11     to whatever Mr. Rascher agreed to with MetLife, to  
12     obtain his medical records, but that does not  
13     relate to S&C?

14            A         MetLife may have had the right to do  
15     that, and I don't know whether S&C had a release or  
16     not at that point.

17            Q         If S&C did have a release, what form  
18     would that take?

19            A         A document that Mr. Rascher would have  
20     signed.

21            Q         Have you seen any such document in  
22     this case?

23            A         I think there were documents to that  
24     effect in the Health Services file.

1           Q           What were they?

2           A           The short-term disability paperwork, I  
3 believe, included a release. There was a packet of  
4 information, and I think a release was part of  
5 that.

6           Q           For short-term disability, that's  
7 still while Mr. Rascher is an employee, correct?

8           A           Yes. He would have been an employee  
9 at that time, but I don't know if the release was  
10 specific to short-term disability administration or  
11 if it was a time bound -- you know, some release  
12 for a year or something like that. I don't recall.

13          Q           Were, again, all the documents that  
14 you saw in the Health Services file produced in  
15 this case?

16          A           Yes.

17          Q           And if I've seen no such document,  
18 does that mean it doesn't exist in your file?

19                      MR. BRENNEMAN: Objection to form.

20                      BY THE WITNESS:

21          A           I think it does exist because our  
22 Health Services team self-administers our  
23 short-term disability policy, and they do  
24 communicate with the doctors. So I do believe they

1           A           I don't think his desire to come back  
2 to work spoke at all to his ability to come back to  
3 work.

4           Q           At that point, there's an issue with  
5 respect to whether he can or can't, correct?

6           A           He felt that he could.

7           Q           Okay. At that point, you had no  
8 information medically whether Mr. Rascher couldn't  
9 or could return to work?

10          A           At that point, our medical information  
11 was that he could not, that he was totally  
12 disabled.

13          Q           And where does that come from? What  
14 does that understanding come from?

15          A           The six months of STD verification of  
16 disability, his submission to the LTD carrier that  
17 he was totally disabled, and the fact that the LTD  
18 carrier was still treating him as completely  
19 disabled.

20          Q           Okay. So that was based upon what was  
21 happening with respect to his long-term disability?

22          A           The information that we had was, yes,  
23 he was totally disabled, and he had been for a  
24 year.

1 Q What was his date of termination?

2 A The termination date was August 29  
3 because that was his one-year anniversary, but he  
4 wasn't terminated -- in fact, the nurse,  
5 Sophia Quang reassured him when she called him,  
6 "You can come in and see Dr. Khanna. We won't  
7 proceed with the termination until you've seen Dr.  
8 Khanna. He wasn't terminated until August 31, the  
9 date of termination. The effective date was 8/29  
10 because that was the one-year anniversary per our  
11 policy.

12 Q So that's kind of a backdating of his  
13 actual termination date?

14 A Yes. The effective date used was used  
15 in accordance with our policy which says that if a  
16 person cannot return to work after being off for  
17 disability for a full year, then the person will be  
18 separated from the payroll.

19 Q But you're saying, in reality, he  
20 wasn't actually terminated until after August 29th?

21 A He was effectively -- He was  
22 terminated and told he was being terminated  
23 August 31st.

24 Q And, again, if he's terminated and



1 orientation, national origin, disability, veteran  
2 status, or marital status," correct?

3 A Yes.

4 Q And on the second page of the  
5 document, it indicates that "S&C provides  
6 reasonable accommodations to qualified individuals  
7 with disabilities, unless doing so would result in  
8 undo hardship to the company." Is that correct?

9 A Correct.

10 Q Is there any contention here that  
11 providing Mr. Rascher with a reasonable  
12 accommodation would cause undue hardship to the  
13 company?

14 MR. BRENNEMAN: Objection to the form.

15 BY THE WITNESS:

16 A Well, he was accommodated with a  
17 year's worth of time off, you know, the first six  
18 months at full pay, the second six months per the  
19 long-term disability. So he was accommodated  
20 through that one-year absence.

21 BY MS. DORAN:

22 Q And so that was not a hardship,  
23 correct?

24 A Correct.

1     that we use when people ask to come back to work,  
2     when we're returning people to work and they're on  
3     narcotics.

4                                 (Whereupon, Mr. Ethan Cohen  
5                                 entered the conference room.)

6     BY MR. FIORITO:

7             Q           Were you familiar with this practice  
8     before you read it in her e-mail?

9             A           Somewhat familiar.

10            Q           What were you familiar with before?

11            A           Well, I knew that short-term use of  
12     narcotics in acute situations, we would wait until  
13     the person didn't have that need anymore. You  
14     know, if there was an arthroscopic knee surgery or  
15     something and the person was taking narcotics for  
16     the first several days, we would wait until that  
17     period expired before they came back.

18            Q           What period?

19            A           The period when they were reliant on  
20     those narcotics to get through the acute phase.

21            Q           And how would you know whether they  
22     were reliant on it?

23            A           The doctors would release them after a  
24     certain period of time.

1           Q           So do you require proof from employees  
2           that they're off narcotic -- narcotic medication?

3           A           We require a release from the doctor.

4           Q           So you're saying that no S&C employee  
5           is allowed to work and take narcotic medication  
6           that's prescribed?

7                       MR. BRENNEMAN: Object to the form.

8           BY THE WITNESS:

9           A           No.

10          BY MR. FIORITO:

11          Q           Under what circumstances can a person  
12          at S&C work with -- while on narcotic medication?

13          A           If they're taking their medication  
14          prior to four hours, if they've been off of it for  
15          four hours before starting work, they're not using  
16          narcotics during work, and the expectation is that  
17          narcotic medication would not be an ongoing and  
18          continuous medical regimen.

19          Q           And this applies to -- The four-hour,  
20          for example, window, that applies to all narcotics?

21          A           I don't know -- Prescription narcotics  
22          is what I know.

23          Q           Does it apply to all prescription  
24          narcotics as the policy or the practice?

1 have done that --

2 Q Could have?

3 A -- by phone or something, yeah.

4 Q The next one is interaction with  
5 production personnel on the plant floor to answer  
6 production inquiries and oversee and troubleshoot  
7 issues and problems.

8 What about that one?

9 A That one was a problem in terms of,  
10 you know, the need to be able to be on the floor in  
11 those production areas working with the product.

12 Q And with respect to those production  
13 areas, is there a specific policy that S&C  
14 maintains with respect to assistive devices in  
15 those areas?

16 A My understanding is there's not a  
17 policy about it, but that the health, safety, and  
18 environmental group does not permit people to be on  
19 the production floor with canes or crutches or  
20 boots.

21 Q And why?

22 A A person who needs a cane or a crutch  
23 or a boot has some independence need that has to be  
24 supplemented. And to supplement weightbearing or

1 balance or strength with a device like that puts  
2 you at risk when you are walking on a production  
3 floor that has obstacles. There are -- Despite the  
4 best efforts to keep the floors clean, the floors  
5 can be slippery. You know, a cane -- use of a cane  
6 with a single point bearing weight can slip.

7                   There's traffic, forklift  
8 traffic. There's, you know, even bicycles. We  
9 have some people that use bicycles to transport  
10 materials. There's a lot of cross traffic and  
11 intersections.

12                   There's overhead cranes carrying  
13 materials, so anything that impedes your ability to  
14 be able to manage your own safety walking through  
15 or to see or visualize what's happening and  
16 anticipating what's coming would be an issue.

17           Q           And where did you get the information  
18 that you just shared with me that using these  
19 assistive devices would result in the calamities  
20 that you're describing?

21           A           I got the information that I just  
22 described from talking with Kathleen and the  
23 health, safety, and environmental people.

24           Q           When was that conversation, or was it

1 time that Mr. Rascher was on short-term disability  
2 that also covered, for example, things like  
3 reasonable accommodations?

4 A Yes. There were multiple  
5 communications that way.

6 MR. BRENNEMAN: That's all the  
7 questions I have.

8 MS. DORAN: Just one follow-up.

9 FURTHER EXAMINATION

10 By Ms. Doran:

11  
12 Q And those communications were limited  
13 to the time where he was on his short-term  
14 disability leave?

15 A Well, they weren't limited to that  
16 time. They took place during the time when he was  
17 on his short-term.

18 Q So those communications to Mr. Rascher  
19 would have been during the period of time that he  
20 was on short-term disability?

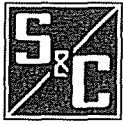
21 A Correct.

22 MS. DORAN: That's all I have.

23 MR. FIORITO: I have no questions.

24 MR. BRENNEMAN: Reserved.

# Exhibit H



**S&C ELECTRIC COMPANY**

Excellence Through Innovation

6601 North Ridge Boulevard  
Chicago, Illinois 60626-3997  
Telephone (773) 338-1000  
Fax (773) 338-3657

July 30, 2015

Richard Rascher  
605 S. George  
Mount Prospect, IL 60056

**Re: Long-Term Disability and Your Employment Status**

Dear Richard:

As you know, your last day of work at your regular job was August 29, 2014 and you are currently on a medical leave of absence and receiving long-term disability benefits. The S&C leave policy provides for a maximum time off of one year. If after one year of leave an employee is unable return to work, with or without reasonable accommodation, the employee will be separated from the S&C payroll.

Richard, you are approaching the end of this one-year period. However, prior to separating you from the S&C payroll, it is important to evaluate your current status. Since you have not returned to work as of the date of this letter, we are concluding that you presently remain disabled from your position at S&C. Therefore, I am writing to inquire specifically whether there is any reasonable accommodation that would allow you to return to work within the foreseeable future. If there is a reasonable accommodation S&C could consider that would enable you to return to work, please contact us as soon as possible and provide information about the accommodation, so your request can be considered.

If I do not hear back from you by **August 21, 2015**, Richard, we will proceed with your separation from the active payroll effective August 29, 2015. Of course, should you remain disabled at the time of your separation from the payroll, you may continue to be eligible for long-term disability pay in accordance with the terms of the S&C Long-Term Disability Insurance Plan.

If you have any further questions or concerns regarding the status of your leave of absence, please feel free to contact me at 773 338-1000, extension 2325.

Yours very truly,  
S&C ELECTRIC COMPANY

*Marcia R. Burton*

Marcia R. Burton  
Sr. Benefit Services Administrator

S&C000264





**S&C ELECTRIC COMPANY**

Excellence Through Innovation

6601 North Ridge Boulevard  
Chicago, Illinois 60626-3997  
Telephone (773) 338-1000  
Fax (773) 338-3657

March 11, 2015

Richard L. Rascher  
605 S. George St.  
Mount Prospect, IL 60056

Dear Richard,

This letter is to confirm your benefits as an S&C team member applying for long-term disability benefits. You will note that this letter is written in sections according to the specific benefit being explained and covers some of the same information provided to you in an earlier letter dated January 21, 2015. We urge you to keep this letter with your other important papers.

#### **PAYROLL STATUS**

Richard, you recently completed 6-months of short-term disability leave and the Short-Term Disability Pay period that ran concurrent with your medical leave has ended as of March 2, 2015. You have now been placed on an unpaid medical leave of absence while you make application for benefits under the S&C Long-Term Disability Insurance Plan. You may remain on this extended medical leave of absence until August 29, 2015, one year from your last day worked, as long as documentation provided to S&C Health Services continues to support the need for a medical leave of absence.

If you are not able to return to work prior to August 29, 2015, your employment will end as of that date due to being absent for one year for reasons of Long-Term Disability. Should you return to work, with or without accommodation, before August 29, 2015, your employment status with S&C would remain unchanged.

#### **S&C HEALTH AND WELLNESS BENEFITS**

The S&C Health and Wellness Plan, S&C Dental Assistance Plan, and S&C Voluntary Vision Plan team-member only coverage's you elected for a January 1, 2015 effective date may continue up to your separation from the Active Payroll on August 29, 2015 as long as you remain on an approved medical leave of absence. This period of extended coverage is 100% paid for by S&C Electric Company.

Following your separation from the S&C Active Payroll, your coverage may continue for up to 29 months under the **Consolidated Omnibus Budget Reconciliation Act or COBRA**. S&C will pay the cost of your COBRA for the plans in which you are enrolled at the time of your separation from the active payroll for up to 18 months or the termination of your approved long-term disability benefit period, whichever occurs sooner.

S&C000274

Richard L. Rascher  
March 11, 2015

Page 2 of 3

### **Special Provisions Regarding Medical Plan Coordination with Medicare**

While in effect, S&C's health care plan will remain primary to your Medicare coverage; however, the plan will coordinate with Medicare Part A and will assume Medicare Part B coverage when processing claims. This means that if you do not obtain Medicare Part B, you will be responsible for a larger portion of the medical claim costs.

You are Medicare eligible and if you have not already registered, you must register for your Part A coverage (free under Medicare) and it is recommended that you also obtain Medicare Part B (there is a premium associated with Part B coverage). You should make application for this coverage prior to your separation date of August 29, 2015. **Please notify Benefit Services at S&C Electric Company when you completed your Medicare enrollment process.**

At the end of the Company paid COBRA coverage (**March 2, 2016**), you will have the option to continue your COBRA coverage by paying the COBRA premium for the balance of the 29-month COBRA coverage period remaining. If you elect continuation coverage for yourself Medicare will become primary on (**March 3, 2016**), and the S&C health plan will become secondary to Medicare.

Your coverage's as an S&C team member on an extended medical leave of absence or under COBRA are the same coverage's you would have had were you still at work. Medical bills should be submitted to Blue Cross and Blue Shield of Illinois, Dental bills should be submitted to MetLife and Vision bills should be submitted to EyeMed. Please note that any changes in the S&C Health and Wellness Plan, the S&C Dental Assistance Plan and the S&C Voluntary Vision Plan that affect active S&C team members will also affect your coverage's.

### **S&C LONG-TERM DISABILITY INSURANCE PLAN**

**Should your application for long-term disability benefits be approved** under the S&C Long-Term Disability Insurance Plan, you will be eligible for a "Basic Payment" equal to 66.67% of the monthly equivalent of your pay rate when you were last actively at work. This Basic Payment benefit will be reduced if you receive income from certain other sources (Social Security, any other disability or retirement benefits, etc.). Please note that the disability payments you are receiving are considered **taxable** income to you. We suggest you consult with a tax advisor regarding this matter.

S&C Long-Term Disability Insurance Plan checks can continue as long as you are disabled, under the definition of the plan, for a limited payment period for **a maximum of 12 months** from your Long-Term Disability date of **March 3, 2015 through March 2, 2016**. MetLife will determine your continued disability by consulting with your physician and by requesting updated medical information on you. Approximately once every three months, MetLife will send forms for you and your doctor to complete. Once the new forms are completed, you may return them to MetLife. If you and your doctor do not complete the forms in a timely manner, your checks from MetLife may stop until the forms are received.

S&C000275

Richard L. Rascher  
March 11, 2015

Page 3 of 3

**S&C LIFE INSURANCE PLAN**

As long as you remain qualified for disability benefits through MetLife as an eligible participant under the S&C Long-Term Disability Insurance Plan, your coverage under the S&C Life Insurance Plan does not change because of your long-term disability status. Your current S&C Life Insurance Plan coverage totals \$108,000 and will stay in effect for a maximum of 12 months from your Long-Term Disability date of **March 3, 2015 through March 2, 2016**.

**S&C 401(k) RETIREMENT SAVINGS & TEAM MEMBER STOCK OWNERSHIP PLAN**

Richard, if you do not return to work prior to August 29, 2015, S&C will ask you to make a decision with regard to your S&C 401(k) Retirement Savings and Employee Stock Ownership Plan balance. We will send you the paperwork in a separate mailing.

**CONCLUSION**

We hope all the information contained in this letter has been presented in a clear and understandable manner. If not, please let me know if you have any questions. The subject of benefits can be very complicated and we want to make sure you understand everything to your complete satisfaction.

Yours very truly,  
S&C ELECTRIC COMPANY

*Marcia R. Burton*

Marcia R. Burton  
Sr. Benefit Services Administrator

mrb/

**Section 4: Employee's Job Description**Name of Employee: Richard L. RascherUsual Days Worked 5 /per weekEmployee's Job Title: Senior DesignerHours Worked 45 /per week

Social Security Number: \_\_\_\_\_

Claim Number: \_\_\_\_\_

This section should be completed by someone who is familiar with the employee's job functions (e.g. manager or supervisor). Complete all sections. This section must be completed AND you must also attach a copy of your company's job description for the employee.

Name of Person Completing This Section: \_\_\_\_\_

Title: MANAGER - CUSTOM ENGINEERINGSignature: Chris RomyDate: 1/23/15

Place an X in each of the appropriate boxes to describe the extent of the specific activity performed by this employee.

		Number of hours per work shift					Number of hours per work shift							
		0	1-2	3-4	5-6	7-8+			0	1-2	3-4	5-6	7-8+	
1.	Sitting				X		14.	Grasping						
2.	Standing		X				A.	Simple/Light						
3.	Walking	1					1.	Right Hand Only		X				
4.	Bending Over	X					2.	Left Hand Only	X					
5.	Twisting	X					3.	Both Hands	X					
6.	Climbing (stairs)	1					B.	Firm/Strong						
7.	Reaching Above Shoulder Level	X					1.	Right Hand Only	X					
8.	Crouching/Stooping	X					2.	Left Hand Only	X					
9.	Kneeling	X					3.	Both Hands	X					
10.	Balancing	X					15.	Fine Finger Dexterity						
11.	Pushing and Pulling (File cabinet drawers)	1					A.	Right Hand Only	X					
12.	Repetitive Use of Foot Control						B.	Left Hand Only	X					
A.	Right Foot Only	X					C.	Both Hands	X					
B.	Left Foot Only	X					16.	Use of Head and Neck in:						
C.	Both Feet	X					A.	Static Position	X					
13.	Repetitive Use of Hands						B.	Twisting	X					
A.	Right Hand Only	X					C.	Looking Up	X					
B.	Left Hand Only	X					D.	Looking Down	X					
C.	Both Hands	X												
17.	Lifting or carrying													
A.	Up to 10 lbs													
B.	11 - 20 lbs													
C.	21 - 50 lbs													
D.	51 - 100 lbs													
E.	100 + lbs													
18.	Frequency of Interpersonal Relationships Necessary to Perform the Job													
19.	Frequency of Stressful Situations Necessary to Perform the Job													

In the course of performing the job, the employee is required to:

20. Drive cars, trucks, forklifts and/or other equipment

21. Be around moving equipment and/or machinery

22. Walk on uneven ground

Yes	No
	X
X	
	X

23. Be exposed to dust, gas, or fumes

if yes, are respirators required

24. Be exposed to marked changes in temperature or humidity

25. Is overtime required on a routine basis

Yes	No
	X
	X
X	



**S&C ELECTRIC COMPANY**

Excellence Through Innovation

6601 North Ridge Boulevard  
Chicago, Illinois 60626-3997  
Telephone (773) 338-1000  
Fax (773) 338-3657

January 21, 2015

Richard L. Rascher  
605 S. George St.  
Mount Prospect, IL

**Subject: Applying for S&C Long-Term Disability Insurance Plan Benefits**

Dear Richard,

You may already be aware that S&C Electric Company offers two disability-related benefits that provide income during an extended absence related to a severe illness or injury; S&C Short-Term Disability (STD) Pay and the S&C Long-Term Disability Insurance Plan. We understand that you are experiencing an extended absence due to a disability and are now currently accessing benefits under the S&C Short-Term Disability Pay provisions.

In the event your Short-Term Disability Pay period, the first 182 calendar days (six months) of a medically authorized absence related to a specific disability, comes to an end before you are able to return to work, it is important for you to understand the next steps. This letter contains information about your current status and what you need to do to apply for further income protection in the event your disability extends beyond the end of your Short-Term Disability Pay period. Following a review of this letter, please feel free to contact me at 773-338-1000 extension 2535 with any questions.

**YOUR CURRENT STATUS**

You have been on a Leave of Absence for Medical Reasons and you are receiving short-term disability pay. Your current disability leave and STD pay is being administered through Health Services. Under short-term disability pay provisions, the first 182 calendar days (six months) of a medically authorized absence related to a specific disability is known as the "qualifying period." During this "qualifying period," an employee may receive short-term disability pay if they are medically authorized off work and remain in compliance with all S&C Short-Term Disability Pay provisions. At the end of the six-month period, short-term disability pay ends.

Richard, let's look at the dates relative to your particular situation. Your Short-Term Disability period started on August 29, 2014 and will end on **March 2, 2015**. Health Services has placed you on a Leave of Absence while you are on Short-Term Disability.

**ENDING OF SHORT-TERM DISABILITY PERIOD AND PAY**

If your absence extends beyond **March 2, 2015**, it is important that we start the Long-Term Disability Insurance application process to provide you with income protection

January 21, 2015  
Richard L. Rascher

Page 2 of 3

beyond the end of your Short-Term Disability Pay period. The long-term disability application process takes time and it's always better to be proactive and get the application process started early. If you are able to return to work before your Long-Term Disability Insurance benefit date (**March 3, 2015**), this application does not impact your eligibility for Long-Term Disability benefits if you ever need to apply again in the future.

#### **APPLYING FOR S&C LONG-TERM DISABILITY BENEFITS**

It is important to complete an application for LTD benefits before your STD pay ends in an effort to avoid, or minimize, a break in income while you remain disabled. It is also important to note that applying for benefits under the S&C Long-Term Disability Insurance Plan **does not** guarantee benefits. The Metropolitan Life Insurance Company (MetLife) is the insurance company that administers S&C's Long-Term Disability Insurance Plan. MetLife may require additional information to review your application before making a decision on whether your disability qualifies for benefits under the plan.

Under the S&C Long-Term Disability Insurance Plan, should your application for long-term disability benefits be approved, you will be eligible for a "Basic Payment" equal to 66.67% of the monthly equivalent of your pay rate when you were last actively at work. This Basic Payment benefit will be reduced if you receive income from certain other sources (Social Security, any other disability or retirement benefits, etc.). Please note that the disability payments you receive are considered **taxable** income to you. We suggest you consult with a tax advisor regarding this matter.

Richard, I have taken the liberty of including a partially completed application for S&C Long-Term Disability Insurance Plan benefits.

To apply for benefits there are three steps:

1. Complete your section of the application (areas are highlighted).
2. Have your treating physician complete the appropriate sections.  
(Please also remember to sign the top of the Attending Physicians Statement).
3. **Return the all of the completed documents as soon as possible by mail, fax or e-mail to Marcia Burton.**

S&C Electric Company  
Attention: Marcia Burton  
6601 N. Ridge Blvd.  
Chicago, IL 60626-3997  
Phone Number: (773) 338-1000 Ext. # 2535  
Fax Number: (773) 381-4987  
E-mail: [marcia.burton@sandc.com](mailto:marcia.burton@sandc.com)

January 21, 2015  
Richard L. Rascher

Page 3 of 3

When Benefit Services receives your completed application, your application will be submitted to MetLife for processing.

Upon completion of the review process, MetLife will inform you of the status of your application. In the event you are approved for the LTD benefit, your benefit will be retroactive to the date your Short-Term Disability Pay ended. In the event your application is denied, you have the right to appeal.

Again, if you have any questions, please contact me at 773-338-1000, extension 2535.

Very truly yours,

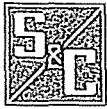
**S&C ELECTRIC COMPANY**

*Marcia Burton*

Marcia Burton  
Senior Benefit Services Administrator

MRB/Enclosures: LTD Claim Form – Employee Statement  
Attending Physician Statement





## **S&C ELECTRIC COMPANY**

Excellence Through Innovation

September 10, 2014

Richard Rascher  
605 S George St  
Mount Prospect, Illinois, United States, 60056

RE: Approval of Medical Leave of Absence and Short Term Disability Salary Pay Provisions

Dear Richard,

Health Services has received the necessary medical documentation from Dr. John Park, MD. Based on the information received, we have approved your initial disability and medical leave of absence leave until Monday 10/6/14.

Please have your provider complete the FMLA/Short Term Disability paperwork that was given to you in Health Services on 9/8/14. This paperwork should be completed and faxed back to Health Services confidential fax 773-338-6013 as soon as possible. The completed paperwork is required to substantiate your continued medical leave of absence and eligibility for Short Term Disability pay.

Health Services utilizes National Medical Disability guidelines when determining disability durations. Medical treatment that goes beyond guidelines must be supported by objective clinical data submitted by your provider.

It is the employee's responsibility to ensure that updated medical information is provided to Health Services in a timely manner. Failure to do so may result in the discontinuation of your authorized medical leave of absence and could also result in a lapse in pay. Health Services will work directly with you when updated medical information is needed throughout your disability leave. In addition, it is also your responsibility to keep your supervisor informed on your anticipated return to work date throughout your absence. Please note that per HIPAA regulations, you are not required to share any personal health information with your supervisor.

S&C000332



You may contact me in Health Services at 773-338-1000 extension 2082 should you have any questions or concerns.

Sophia Quang, RN, MSN, COHN-S  
Health Services  
S&C Electric Company  
6601 North Ridge Blvd. Chicago IL, 60626-3997  
Telephone: (773) 381-2394 Fax: (773) 338-6013



**S&C ELECTRIC COMPANY**

Excellence Through Innovation

December 1, 2014

Richard Rascher  
605 S George St  
Mount Prospect, Illinois, United States, 60056

RE: Extension of Medical Leave of Absence

Dear Richard,

Health Services received the requested updated medical documentation from Dr. John Park, MD dated 11/26/14. Based on the information received, we have approved an extension of your medical leave of absence and Short Term Disability (STD) Pay or salary continuance until 3/3/15.

If you are able to return to work before then, please have your provider complete the Release to Return to Work form. You must have a written release from your provider along with any restrictions that might be medically necessary. This information must be presented to Health Services prior to your return to work. Please note that in the event that an employee is not able to return to full duty, every attempt is made to provide work to accommodate an employee's restrictions. Health Services, Human Resources and Supervision will work together to find a temporary work assignment should this be necessary.

Health Services utilizes National Medical Disability guidelines when determining disability durations. Medical treatment that goes beyond guidelines must be supported by objective clinical data submitted by your provider.

It is the employee's responsibility to ensure that updated medical information is provided to Health Services in a timely manner. Failure to do so may result in the discontinuation of your authorized medical leave of absence and could also result in a lapse in pay. Health Services will work directly with you when updated medical information is needed throughout your disability leave. In addition, it is also your responsibility to keep your supervisor informed on your anticipated return to work date throughout your absence. Please note that per HIPAA regulations, you are not required to share any personal health information with your

S&C000336

supervisor.

You may contact me in Health Services at 773-338-1000 extension 2082 should you have any questions or concerns.

Sincerely,

Sophia Quang, RN, MSN, COHN-S  
Health Services  
S&C Electric Company  
6601 North Ridge Blvd. Chicago IL, 60626-3997  
Telephone: (773) 381-2394 Fax: (773) 338-6013



## Re-evaluation

Illinois Bone & Joint Institute Rehabilitation Services  
Des Plaines  
900 Rand Road  
Suite 110  
Des Plaines, IL 60016  
tel: 847-954-7646  
fax: 847-954-7648

**Patient:** Richard Rascher (MRN # P828861)

**Gender:** M

**DOB:** 06/01/1941

**Visit #10:** 08/26/2015

**Evaluation Date:** 07/27/2015

**Injury Date:** n/a

**Onset Date:** n/a

**Supervising Provider:** Ann Phelps PT, DPT, OCS

**Therapist of Record:** Ann Phelps PT, DPT, OCS

**Referring Practitioner:** MATTHEW JIMENEZ MD

**Provider:** Crystal Smuk PTA **Account #:** ACVMP

**Provider Email:**

csmuk@ibji.com

### # Medical Diagnoses

ICD9

1) Aftercare for healing traumatic fracture of hip V54.13

### # Treating Diagnoses

ICD9

1) Difficulty in walking

719.7

### Reason For Referral

Patient states that since beginning physical therapy he is better, relying more on the cane than on the walker. Patient reports walking short distance in the kitchen without an assistive device. Patient's main complaint is left lumbar spine / lower extremity pain that is worse in the morning and with prolonged sitting. Patient continues to have trouble sleeping due to pain. Patient hasn't return back to work.

Functional limitations: standing for greater than 5 minutes, sitting for greater than 5 minutes, stairs, getting up from a chair, work related activities.

### Medical History

**Prior & Existing Conditions:** Cancer, Fractures

**Surgical History:** Right Hip in February 2015

**Fall History:** Patient has **not** been injured by a fall in the past year. Patient has **not** had two or more falls in the past year. Patient is **not** at risk for falls.

### Medications:

Medications scanned into patient's file.

### Measures

The following measures were identified for the patient's **Hip And Thigh** condition:

Measure	Initial (07/27/2015)	Current (08/26/2015)	Target
<b>Patient Specific Functional Scale (PSFS) - most important activity</b> Score on the Patient-Specific Functional Scale (PSFS) for the most important activity limitation	Moderate activity limitation: PSFS score 7 low transfers	Moderate activity limitation: PSFS score 7 low transfers	No activity limitation (able to perform activity at pre-injury level): PSFS score of 10
<b>Patient Specific Functional Scale (PSFS) - 2nd most important activity</b> Score on the Patient-Specific Functional Scale (PSFS) for the 2nd important activity limitation	Moderate activity limitation: PSFS score 6 walking	Moderate activity limitation: PSFS score 4-5 walking	No activity limitation (able to perform activity at pre-injury level): PSFS score of 10

Measure	Initial (07/27/2015)	Current (08/26/2015)	Target
<b>Patient Specific Functional Scale (PSFS) - 3rd most important activity</b> Score on the Patient-Specific Functional Scale (PSFS) for the 3rd important activity limitation	Severe activity limitation: PSFS score 4 bending over	Severe activity limitation: PSFS score 5 bending over	<i>No activity limitation (able to perform activity at pre-injury level): PSFS score of 10</i>
<b>Pain (at rest)</b> Current level of pain	Moderate pain: 5/10	No pain: 0/10	<i>No pain: 0/10</i>
<b>Pain (at worst)</b> Highest level of pain during the last 24 hours	Severe pain: 8/10	Severe pain: 8/10	<i>No pain: 0/10</i>
<b>Walking short distances (capacity)</b> Walking around rooms and through hallways for short distances	Low participation: Able to walk (1 to 10) yards	Medium participation: Able to walk (11 to 100) yards	<i>Full participation: Able to walk &gt; 500 yards</i>
<b>Walking short distances (symptoms)</b> Walking short distances without symptoms	Severe problem: Can walk only (1 to 10) yards without symptoms	Moderate problem: Can walk (11 to 100) yards without symptoms	<i>No problem: Able to walk &gt; 500 yards without symptoms</i>
<b>Stair Ascending</b> Ascending stairs	Severe difficulty: Requires assistive devices or rails using a single step strategy	Severe difficulty: Requires assistive devices or rails using a single step strategy	<i>No difficulty: Can ascend using a normal step over step strategy</i>
<b>Stair Descending</b> Descending stairs	Severe difficulty: Requires assistive devices or rails using a single step strategy	Severe difficulty: Requires assistive devices or rails using a single step strategy	<i>No difficulty: Can descend using a normal step over step strategy</i>
<b>Strength (hip abductors/ gluteus medius)</b> Gluteus medius muscle test grade	seated 4+/5 RL	seated 4/5 R/L	<i>Normal: 5/5 strength</i>
<b>Strength (hip flexion)</b> Psoas / iliacus muscle test grade	seated 3+/5 RL	seated 4/5 R/L	<i>Normal: 5/5 strength</i>
<b>Strength (knee extension / quadriceps)</b> Quadriceps femoris with manual muscle testing	seated 4/5 RL	seated 4+/5 R/L	<i>Normal: 5/5 strength</i>

**Additional Evaluative Findings**

Patient ambulated into the clinic with the use of a rolling walker with flexed posture and had a step to gait pattern with his right lower extremity.

**Assessment**

Patient has been seen in physical therapy for a total of 10 visits for lower extremity weakness and deconditioning due to recent surgeries. Patient demonstrates improved lower extremity endurance as he is able to walk >300 feet with a quad cane without becoming short of breath. Patient continues to display balance deficits which will affect his ability to ambulate without an assistive device. Patient remains challenged with sit to stand transfers requiring bilateral upper extremity assistance due to a combination of lower extremity weakness and left sided low back and lower extremity pain. Patient would benefit from additional lower extremity gait and balance training with initiation of lower extremity strengthening to allow him to return prior level of function

Prognosis: Good with continued compliance with physical therapy and his home exercise program.

Functional Goal	Patient Progress
-----------------	------------------

Patient will be independent with home exercise program to assist with improving strength and range of motion in the hip to assist with returning to prior level of function. 4-6 weeks	Ongoing.
Patient will be able to ascend a 6 in step 10 times safely with minimal upper extremity support to assist with stairs in his home. 4-6 weeks	Mr. Rascher has made moderate progress toward meeting this goal, as evidenced by being able to ascend a 4" step with minimal upper extremity assistance.
Patient will be able to walk 50 ft with a quad cane safely with good posture to assist with community ambulation. 4-6 weeks	Ongoing. Although patient is able to walk 50 ft safely, he continues to have a forward flexed posture.

**Plan of Care: Hip and thigh****Intervention Strategy****Hip and Thigh**

*Neuromuscular Reeducation, Therapeutic Activities, Therapeutic Exercise, Self-care / Home Management Training, Electrical Stimulation - Unattended 97014, Hot/Cold Pack*

**Recommendations**

Mr. Rascher will be seen for therapy as described at the following frequency and duration: 2 visits per week for 6 weeks will reassess as needed.

Per payer requirements, please sign this Progress Report form, certifying this physical therapy plan of care and return the form to our office. Thank you.

The patient was actively involved in the development of the Therapy Plan of Care and understands it and is in agreement with it.

**Treatment Provided Today**

The following interventions were performed for the patient's hip and thigh condition:

**Therapeutic Exercise (97110): 45 min**

Recumbent Bicycle - L 4 U/LE 10 min for gait retraining

long arc quad - 3x10 RL 1.5lb

sit to stand - 2x10 table 23.5" high UE required VC needed for standing straight for gait

balance - NBOS 15 sec x 2 ea

gait training - x350' with quad cane

standing HR - 3x10

standing marching - 2x10 RL to assist with reciprocal movements when walking

Hip Extension / Gluteus Maximus Strengthening: Standing reverse leg raises - 2x10 RL to assist with hip extension during ambulation

Forward Step Ups - R/L 2x10 on each 4" box

**Therapeutic Activities (97530): 0 min****Neuromuscular Reeducation (97112): 6 min**

weight shifting on MT - x20 (anterior-posterior and right-left)

modified tandem stance with c/s rotation - 30 seconds x2 R/L

tandem stance - 1x30sec

**Self-care / Home Management Training (97535): 0 min****Hot/Cold Pack (97010): 15 min**

Cold pack applied to the involved region - to lumbar spine and left hip x15 minutes after.

**Electrical Stimulation - Unattended 97014 (97014): 0 min****Provider Interactions With Patient During Visit**

Verbal cueing on proper performance of the prescribed exercises.

**Treatment Time**

51 minutes direct contact (timed) with patient.

66 minutes total treatment time.

**Therapist Signature(s)**

Electronically signed by Ann Phelps PT, DPT, OCS at 08/28/2015 01:01 PM CDT

RICHARD PASCHER D.O.B. 6/1/41

8/31/15

Pl. states he has been off work since 9/14. Sx began in 4/14 when he was dx'd w/ Rectal cancer. Had colon surgery + chemo/radiation. Worked on and off until 9/14. Had a colostomy bag so he was taken off work beginning 9/20/14. Also treated for "breast cancer" (melanoma), had it removed ~ 6/14. Was kept off work because of the colostomy bag and that he may need more chemo. Was "re-connected" on 12/20/14. Developed a complication (hernia) so he had a hernia repair at the end of 12/14.

Also developed problems w/ his gait and developed pain from his "knees to his ankles". Treated w/ Ambien, had trouble walking/getting out of bed in 2/15. Had a hip replacement on 2/21/15, followed by rehab for ~ 12 weeks, then began wt. bearing. Now uses a cane for ambulation and still doing rehab.

see below. Worked @ S&C x 52 years. Currently a Senior Product Designer  
meds: - Baby ASA, Iron tablet, Gout tablet, Water pill, Pain pill; Cannot remember any pill names

PE: poor memory recall.

Ambulates w/ a four prong cane

Seeing: Dr. Brian Clay @ IJH for interventional pain management  
 Richard Higgins, Internal Medicine

Imp. - S/P Rectal Ca  
 S/P Hip replacement

PE: - Pl. appears to have poor memory recall. May have trouble performing cognitive functions of his job.

① Pl. will not be able to walk without a cane and cannot do any lifting per his job description.

② I do not believe he is capable to perform the essential functions of his job Full-Time now.

③ Do not anticipate Pl. will progress from Restricted work to Full Time in a REASONABLE PERIOD OF TIME.

S&amp;C000346



# S&C Long-Term Disability Insurance Plan

Applicable to S&C–U.S. Team Members Only



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This August 2014 edition of the S&C Long-Term Disability Insurance Plan booklet supersedes the August 2012 edition and includes revisions effective January 1, 2014.

S&C000394

## S&C Long-Term Disability Insurance Plan— An Introduction

---

Long-term disability. We don't like to think about it. Severe illnesses or injuries that keep us off the job for nine months, a year, five years, the rest of our lives . . . such disabilities happen only to "other" people.

But just suppose *you* are stricken with a long-term disability. Could you meet the continuing expenses of day-to-day life if month after month you had no income?

S&C Electric Company *has* thought about long-term disability. In fact, S&C was one of the first companies in the Chicago area to institute a comprehensive long-term disability insurance plan to provide team members● with an income during disability due to illness or injury.

Coverage under the S&C Long-Term Disability Insurance Plan is free to you as an S&C team member and is provided under a contract with the designated long-term disability insurance carrier.▲

Details of the S&C Long-Term Disability Insurance Plan are explained on the following pages. We urge you to read this Summary Plan Description carefully and bring any questions you may have to Benefit Services (S&C Extension 2535) in Human Resources at S&C Chicago.

The S&C Long-Term Disability Insurance Plan stands ready to provide earnings protection . . . when you need it most.

In the event of any discrepancies between this summary plan description and the Plan's Group Contract the terms and conditions of the Group Contract will prevail.

● At S&C Electric Company, we believe the contribution of each team member is critical to the success of our company. In legal terms we are an "employee-owned" company. However, we refer to each other as "team members" not "employees" because we depend upon each other to achieve our vision. You will find we refer to ourselves as team members throughout this document except in instances where the term "employee" is necessary.

▲ The designated long-term disability insurance company is the company selected by S&C Electric Company to provide the benefits available under the S&C Long-Term Disability Insurance Plan to eligible S&C employees or their designated beneficiaries. At the time of publication of this booklet, the designated insurance company is Metropolitan Life Insurance Company.

## The Basics

---

The S&C Long-Term Disability Insurance Plan provides earnings protection, at no cost to a team member during periods of illness or injury lasting longer than 182 calendar days. (During the first 182 calendar days, known as the “qualifying period,” earnings protection may be provided through other components of the S&C employee benefits package.)

### ***Definition of “Disability”***

Under the S&C Long-Term Disability Insurance Plan, a team member is considered to be disabled if:

1. During the first 24 months following the qualifying period, the team member is limited from performing the material and substantial duties of his or her occupation due to a non-occupational or occupational illness or injury and if the individual has a 20% or more loss in the monthly equivalent of their pay rate due to the same illness or injury.
2. After the qualifying period plus the next 24-month period, the team member is unable to perform the duties of *any* gainful occupation for which he or she is reasonably fitted by education, training, or experience.
3. The team member is under continuing medical supervision and treatment considered satisfactory by the designated insurance carrier. (The designated insurance carrier retains the right to require that a disabled participant submit to a physical examination by a physician of its choice.)

### ***Eligibility***

Subject to the plan’s pre-existing condition exclusion explained on page 3, an S&C team member is eligible for coverage under the S&C Long-Term Disability Insurance Plan if he or she is assigned to one of the following S&C classifications: full-time or part-time working 30 or more hours per week. Co-op, interns, on-call employees, and dependents of team members are *not* eligible.

### ***Effective Date of Coverage***

S&C Long-Term Disability Insurance Plan coverage becomes effective on the day the team member begins work.

***Pre-Existing  
Condition  
Exclusion***

Coverage for a pre-existing condition is excluded. A team member has a pre-existing condition if he or she received medical treatment, consultation, care, or services including diagnostic measures, or took prescribed drugs or medicines in the 30 days just prior to the effective date of coverage; or had symptoms for which an ordinarily prudent person would have consulted a health care provider in the 30 days just prior to the effective date of coverage; *and* if his or her disability begins in the first five days after the effective date of coverage and results from, or is related to, the medical condition or symptoms experienced during the 3 months prior to coverage.

***Plan  
Administration***

The administrator of the S&C Long-Term Disability Insurance Plan is S&C Electric Company. All claims are initiated by Benefit Services in Human Resources at S&C Chicago pursuant to claim instructions set forth by the designated insurance carrier. Final decisions regarding claims are made by the designated insurance carrier. The contract year and plan year are both the calendar year.

***No Contract of  
Employment***

This plan is not intended to be, and shall not be construed as constituting, a contract of employment or other arrangement between any employee and the company.

## Payment Provisions

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### **Payment Accrual**

Payments under the S&C Long-Term Disability Insurance Plan accrue from the 183rd day of disability. Checks are issued monthly by the designated insurance carrier.

### **Maximum Payment Period**

Once disability payments begin prior to age 60, these payments may continue as long as a team member is disabled up to age 65. If a team member's disability is not permanent and he or she recovers before age 65, disability payments will be discontinued. If disability payments begin at age 60 or older, the maximum payment period is based on the following schedule:

<u>Age at Time Disability Payments Begin</u>	<u>Maximum Duration of Payments</u>
Under age 60 . . . . .	To age 65
Age 60 . . . . .	60 months
61 . . . . .	48 months
62 . . . . .	42 months
63 . . . . .	36 months
64 . . . . .	30 months
65 . . . . .	24 months
66 . . . . .	21 months
67 . . . . .	18 months
68 . . . . .	15 months
69 and over . . . . .	12 months

### **Disabilities with a Limited Payment Period**

There are several disabilities noted below that have lifetime maximum and/or limited payment periods of up to 24 months (or the maximum period of payment, whichever comes first); they are:

- **Disability Due to Mental or Nervous Disorders or Diseases**

For disability due to a mental or nervous disorder or disease, disability benefits will be limited to a lifetime maximum of up to 24 months (or the maximum period of payment, whichever comes first).

Mental or nervous disorder or disease means a medical condition which meets the diagnostic criteria set forth in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders as of the date of the team member's disability. A condition may be classified as a mental or nervous disorder or disease regardless of its cause. This limitation does not apply to a disability resulting from schizophrenia, dementia, or organic brain disease.

- **Disability Due to Alcohol, Drug or Substance Abuse or Addiction**

For disability due to alcohol, drug or substance abuse or addiction, disability benefits are limited to one period of disability during a team member's lifetime. During the period of disability, the team member is

required to participate in an alcohol, drug or substance abuse or addiction recovery program recommended by a physician. Disability benefit payments will end at the earliest of the date the team member receives 24 months of disability benefit payments, the date he or she refuses to participate in the recovery program referred to above; or the date the team member completes such recovery program.

- **Disability due to Chronic Fatigue Syndrome and Related Conditions**

Disability benefits are limited to a lifetime maximum equal to the lesser of 24 months (or the Maximum Benefit Period, whichever comes first).

- **Disability Due to Neuromuscular, Musculoskeletal or Soft Tissue Disorder**

Disability benefits are limited to a lifetime maximum equal to the lesser of 24 months (or the Maximum Benefit Period, whichever comes first).

Neuromuscular, musculoskeletal or soft tissue disorder means, but is not limited to, any disease or disorder of the spine or extremities and their surrounding soft tissue; including sprains and strains of joints and adjacent muscles, unless the disability has objective evidence of seropositive arthritis, spinal tumors, malignancy, or vascular malformations, radiculopathies, myelopathies, traumatic spinal cord necrosis or myopathies.

## **Amount of Payment**

Without having all the details relating to a particular individual's case, this summary plan description cannot specify precisely how much money that person would receive per month if qualified for payments under the S&C Long-Term Disability Insurance Plan. However, the formula used to calculate the plan's monthly payments (except in the case of employment during disability explained on pages 7 and 8) is as follows:

The Basic Payment is based upon 66.67% of the team member's monthly pay rate★. However, this payment will be reduced by the sum of the following other sources of income♦ as defined within the group contract, including but not limited to (1) payments from any other group disability or retirement plan (*excluding* the S&C 401(k) Retirement Savings and Employee Stock Ownership or other company provided stock plans), (2) disability or retirement payments from Social Security or any similar plan or act, (3) salary continuance, (4) payments from the Veterans

★ "Pay rate" is the team member's base compensation plus shift premium, if applicable, when last actively at work. "Pay rate" does not include overtime pay, travel or other field premiums such as engineering, procurement, construction (EPC) and after regular hours (ARH), retroactive pay increases, referral bonuses, special payouts, KPI and AIP payments, seniority cash awards, perfect attendance awards, patent awards, imputed income, or similar compensation.

♦ Only income which commences coincident with or subsequent to the inception of the disability will apply.

Administration, and (5) payments from any state disability program including workers' compensation.

**Note:** If a team member receives any such income in the form of a single sum payment, he or she must, within 10 days after receipt of such payment, give written proof satisfactory to the carrier of: the amount of the single sum payment, the amount to be attributed to income replacement, and the time period for which the payment applies. When such proof is received, the carrier will adjust the amount of the disability benefit. Lump sum payments attributable to income replacement are converted to monthly amounts for the purposes of the 66.67% limit test.

If the sum total of the other eligible sources of income exceeds 66.67% of the participant's monthly pay rate, a minimum monthly benefit of \$100 will be paid as the Basic Payment.

In no event will payments under the plan be less than \$100 per month and effective March 1, 2014 the new maximum monthly benefit is no more than \$18,000 per month.

**Benefit Payments  
Under the Plan  
Are Taxable**

Long-term disability payments provided under the plan are considered taxable income and are subject to federal tax and may be subject to state taxes.

**Social Security  
Payment Increases**

Increases in Social Security payments occurring *after* completion of the 182-day qualifying period and designation of the initial Social Security award will not affect payments under the plan.

**Social Security  
Payments for  
Dependents**

When calculating the Disability Benefit, a family's *total* Social Security payments are considered—the team member's Social Security disability or retirement payment *plus* the related spouse's and children's payments. Once a spouse's or child's payment is discontinued, however, the 66.67% limit is subject to recalculation.

**Social Security  
Payment  
Application**

If a team member is or may be eligible to receive Social Security disability or retirement payments, he or she *must* apply for those payments within six months of the date of disability. Proof of application must be sent to the carrier. When the amount of the payments is known or when the claim is denied, a copy of the Social Security Award Certificate or denial letter must be given to Benefit Services in Human Resources at S&C Chicago and the designated insurance carrier as soon as possible.



## ***Rehabilitation Incentives***

If a team member participates in a rehabilitation program, the carrier will increase the monthly benefit by an amount equal to 10% of the monthly benefit. This will be done before the monthly benefit is reduced by any other income (see Employment During Disability section).

A rehabilitation program is a program approved by the carrier and S&C for the purpose of helping a team member return to work. It may include, but is not limited to participation in one or more of the following activities:

- return to work on a modified basis with the goal of resuming full-time employment for which the team member is reasonably qualified by training, education, experience and past earnings;
- on-site job analysis;
- job modification/accommodation;
- training to improve job-seeking skills;
- vocational assessment and/or training;
- short-term skills enhancement; or
- restorative therapies to improve functional capacity to return to work.

## ***Employment During Disability***

While disabled, a team member is encouraged to work, as his/her health permits. If, during the first 24 months that a disabled team member receives payments under the S&C Long-Term Disability Insurance Plan, he/she becomes re-employed at S&C in any occupation or is employed elsewhere in an occupation that is considered appropriate by the designated insurance carrier, the team member's monthly benefit will be adjusted as follows:

- the monthly benefit will be increased by the Rehabilitation Incentive, if any; and
  - reduced by any income earned working while disabled. This includes, but is not limited to salary, commissions, overtime pay, bonus or other extra pay arrangements from any source.
1. During the first 12 months when a disabled team member is working, his or her disability payment will not be reduced as long as the team member's earnings plus the gross (before tax) disability payment do not exceed 100% of his/her pay rate.★
  2. Beyond 12 months of disability payments, when a disabled team member is working, the team member will receive disability payments based on

★ "Pay rate" is the team member's base compensation plus shift premium, if applicable, when last actively at work. "Pay rate" does not include overtime pay, travel or other field premiums such as engineering, procurement, construction (EPC) and after regular hours (ARH), retroactive pay increases, referral bonuses, special payouts, KPI and AIP payments, seniority cash awards, perfect attendance awards, patent awards, imputed income, or similar compensation.

the percentage of income being lost due to disability. The percentage of loss is applied to the previous disability payment. For example, a 50% loss of income would mean the disabled person would receive 50% of the disability payment. This payment is in addition to the earnings from work.

3. During the first 24 months of disability payments, if a team member's earnings exceed 80% of former pay rate, the designated insurance carrier will no longer consider the individual disabled and payments will cease.

Beyond 24 months of disability payments, if an individual's earnings exceed 60% of former pay rate, the designated insurance carrier will no longer consider the team member disabled and payments will cease.

In no event will payments under the plan be less than \$100 per month or more than \$18,000 per month.

If, at any time during disability, a disabled team member is engaged in any occupation that is not considered appropriate by the designated insurance carrier for rehabilitation, disability payments will cease.

**S&C Benefit Services is to be contacted as soon as possible in the event an individual is released to return to modified work prior to his or her separation from employment with S&C Electric Company.**

### ***Continuing Proof of Disability***

Upon request from the designated insurance carrier, a recipient of payments under the S&C Long-Term Disability Insurance Plan must, within 30 calendar days, provide continuing proof of disability.

### ***Recurrent Disability***

If a team member returns to full-duty work from a disability leave before the end of the 182-day qualifying period, and then becomes disabled again due to the same or related sickness or accidental injury before working for a period of 30 days, a new qualifying period will not be required. Those disability days will be counted toward the original qualifying period. If a team member returns to work for more than 30 days, and then becomes disabled again, a new 182-day qualifying period will be required.

If a team member becomes disabled, and returns to work after the end of the 182-day qualifying period, and becomes disabled again due to the same or related sickness or accidental injury, the employee must fulfill the qualifying period again (182 calendar days), *unless* the second period of disability begins less than 6 months after the end of the first period of disability. Under such circumstances, the recurrent disability is considered to be a part of the original disability and payments during the second period

of disability will be calculated using the same pay rate that was used when calculations were made for the first period of disability. If a team member returns to work for more than 6 months, and then becomes disabled again, a new 182-day qualifying period will be required.

***Discontinuation of Payments***

S&C Long-Term Disability Insurance Plan payments will discontinue in the following instances:

1. If, in the opinion of the designated insurance carrier, the team member ceases to be disabled as defined by the plan.
2. If, as required by the designated insurance carrier, the team member fails to furnish proof of continuing disability.
3. If, as required, the team member fails to submit to a medical examination by a physician chosen by the designated insurance carrier.
4. If, during the first 24 months of payments, the team member is able to work in his or her regular occupation on a part-time basis, but chooses not to.
5. If the team member reaches the end of the maximum period of payment.
6. If the team member's disability earnings exceed the amount allowed under the plan.
7. If the team member dies.

***Ineligible Causes of Disability***

No payments will be made for disabilities resulting directly or indirectly from:

1. War or any act of war
2. Service in the armed forces of any country
3. Any attempt at suicide or intentionally self-inflicted injury while sane or insane
4. Participation in a riot
5. Engaging in a criminal act
6. A pre-existing condition as defined by the plan.

**NOTE:** A team member is not eligible for payments for any period of disability during which he or she is incarcerated.

***Coverage During a  
Leave of Absence  
or Layoff***

During a leave of absence for occupational or non-occupational illness or injury, a team member's S&C Long-Term Disability Insurance Plan coverage is continued at S&C's expense for up to 12 months. During other kinds of leaves and during a layoff, a team member's coverage is discontinued.

***Termination of  
Employment***

If employment terminates, a team member's S&C Long-Term Disability Insurance Plan coverage ceases immediately. However, if the individual is disabled and is fulfilling the 182-calendar-day qualifying period at the time of termination, payments under this plan may commence at the end of the qualifying period and may continue as long as the individual remains disabled up to the maximum payment period.

A team member who is absent from work for a period of twelve consecutive months due to a disability will be separated from the active payroll. Prior to separation from the active payroll, the team member will be contacted to update the status of his or her disability and to determine if a reasonable accommodation consideration is appropriate. Individuals are asked to contact Benefit Services in Human Resources at S&C Chicago with any questions regarding this plan or the treatment of other S&C benefits when disabled.

***Survivor Benefit***

If an S&C team member is receiving or is eligible to receive monthly benefits under the S&C Long-Term Disability Insurance Plan and if that team member dies, the Plan will pay the additional monthly benefit described in this section to the team member's designated beneficiary(ies).

- **Benefit Amount**

The additional monthly benefit will be equal to 100% of the lesser of:

- the monthly benefit the team member receives for the calendar month immediately preceding his/her death;
- the monthly benefit due and payable in the month death occurs, if death occurs during the first month the monthly benefits are payable.

- **Benefit Payment**

The Plan will pay this additional benefit monthly for a period of 3 months. Payments will begin one month after the date of the last monthly benefit payment before the participant's death.

## Procedures for Filing a Claim

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When a team member has been unable to work because of an illness or injury for an extended period of time (normally 150 calendar days) and it is reasonable to believe he or she will remain off work a minimum of an additional 32-days (thereby fulfilling the 182-calendar-day qualifying period), a claim for S&C Long Term Disability Insurance benefits should be started. Benefit Services in Human Resources at S&C Chicago will provide a Long-Term Disability Claim form along with instructions on how to complete the form to the disabled team member.

**The completed employee-portion and physician-portion of the form must be returned to Benefit Services for transmittal to the designated insurance carrier.**

Failure to complete the forms in a timely manner will delay the processing of the claim and may result in a delay of any available benefits under the plan. A delay in payment of benefits under this plan for which the team member is eligible will disrupt his or her income stream.

During application periods that extend beyond the 182-day qualifying period, the team member will be placed on an unpaid occupational or non-occupational leave for a period not to exceed 90 days. Failure to submit application for long-term disability payments within this 90-day period may result in the team member's separation of employment.

The designated insurance carrier will require thorough and complete medical information before payments are approved. To obtain such information, if the claim forms do not contain sufficient data, the designated insurance carrier may ask health care providers to release copies of the individual's medical records. (In applying for payments, the team member authorizes release of such information on the "Claimant's Authorization" portion of the designated insurance carrier form.) The designated insurance carrier may also ask the individual to undergo a physical examination conducted by a physician chosen by the designated insurance carrier. The designated insurance carrier must also be shown that the person is under the regular care of a doctor.

### ***Time Limit for Submitting Claims***

A team member must submit a claim for benefits within the 90-calendar-day period following the qualifying period. If it is not possible to give proof within 90 calendar days, it must be given no later than one year after the time proof would otherwise be required except in the absence of legal capacity.

Legal action regarding a claim can be filed 60 calendar days after proof of claim has been given and up to three years from the time proof of claim is required, unless otherwise provided under federal law.

***Appeal of  
Denied Claim***

If a claim is denied, the designated insurance carrier will send the individual written notification of the reason(s) for the denial of the claim. The team member may appeal the denial within 180 calendar days after receiving the written notification. The team member should submit a written appeal, requesting a review, and stating the reason(s) why he or she believes the claim was improperly denied, to the designated insurance carrier. Within 45 calendar days after submitting an appeal, the individual will be notified in writing of the appeal decision and the reason(s) for the decision. If special circumstances require an extension of time for processing, the team member will be notified of the reasons for the extension, and a decision shall be made no later than 90 calendar days following receipt of the request for review.

***Claim  
Overpayment***

The designated insurance carrier has the right to recover overpayments due to:

- Fraud
- Any error the designated insurance carrier makes in processing a claim
- A team member's receipt of deductible sources of income.

***Special Note  
of Caution***

It is a crime for any person to knowingly and with intent to injure, defraud, or deceive the designated insurance carrier, or provide any information, including filing a claim that contains any false, incomplete, or misleading information. These actions, as well as submission of materially false information, will result in denial of the claim and the individual is subject to prosecution and punishment to the full extent under state and/or federal law. The designated insurance carrier will pursue all appropriate legal remedies in the event of insurance fraud.

Additionally, if the team member is still on the active payroll and is proven to have knowingly provided false, incomplete, or misleading information to the designated insurance carrier with the intent to access benefits for which they are not entitled, the team member will be separated from employment with S&C Electric Company.

***Designated  
Insurance  
Carrier***

Effective January 1, 2013, the designated insurance carrier selected by S&C Electric Company to administer benefits under the plan for eligible employees and their designated beneficiaries is:

Metropolitan Life Insurance Company  
200 Park Avenue  
New York, NY 10166  
1-800-300-4296

Group Contract No. 308286-1-G

## Your ERISA Rights

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*S&C has always administered its employee benefit plans prudently and in the best interests of team members and dependents.*

*Printed below is a statement of your rights taken from Chapter 29, Code of Federal Regulations, Part 2520.102-3(t)(2), U.S. Department of Labor.*

“As a participant in the S&C Long-Term Disability Insurance Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

**Receive  
Information About  
Your Plan and  
Benefits**

“Examine, without charge, in the S&C Benefit Services Office in Human Resources at S&C Chicago, all documents governing the Plan, including insurance contracts and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor.

“Obtain, upon written request to the Director—Benefit Services, copies of documents governing the operation of the Plan, including insurance contracts and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. S&C may make a reasonable charge for the copies.

“Receive a summary of the Plan’s annual financial report. S&C is required by law to furnish each participant with a copy of this Summary Annual Report.”

**Prudent Actions by  
Plan Fiduciaries**

“In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA.”



## ***Enforce Your Rights***

“If your claim for a welfare benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

“Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such case, the court may require S&C to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of S&C.

“If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a Federal court. In addition, if you disagree with the Plan’s decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in a Federal court.

“If it should happen that Plan fiduciaries misuse the Plan’s money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.”

## ***Assistance with Your Questions***

If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from S&C, you should contact the nearest Regional or District Office of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, listed in your telephone directory or visit the EBSA website at **[www.dol.gov/ebsa](http://www.dol.gov/ebsa)**. (Address and phone numbers of the Regional and District EBSA offices are available through the EBSA’s website.) You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hot line of the Pension and Welfare Benefits Administration.



***Additional  
Information***

This Summary Plan Description has attempted to answer most of your questions about the S&C Long-Term Disability Insurance Plan. However, if you have additional questions, you are urged to bring them to Benefit Services in Human Resources at S&C Chicago.

The contents of this S&C Long-Term Disability Insurance Summary Plan Description are intended to be as complete and correct as possible and to explain in simple language the essential features of the plan. However, this information does not constitute the Group Policy and is not a contract of insurance. In the event of any conflict between this summary plan description and Group Policy, the provisions of the group policy will control.

S&C expects the S&C Long-Term Disability Insurance Plan to be permanent, but since future conditions affecting S&C cannot be anticipated or foreseen, S&C must necessarily and does hereby reserve the right to modify, amend, or terminate this plan at any time at its sole discretion. In the event of termination of the plan, coverage thereunder will cease immediately. Individuals whose disabilities commenced prior to plan termination will be eligible to receive payment for such disability, subject to the terms and conditions of the plan.

Should anyone have reason to file a lawsuit involving the S&C Long-Term Disability Insurance Plan, legal process should be directed to the Corporate Secretary, S&C Electric Company, 6601 North Ridge Boulevard, Chicago, Illinois 60626-3997.

S&C Electric Company  
6601 North Ridge Boulevard  
Chicago, Illinois 60626-3997

Employer Identification Number: 36-1747665

S&C Long-Term Disability Insurance Plan: Plan Number 502



S&C000411





Printed in U.S.A

S&C000414

# S&C

# Short-Term Disability Pay

Applicable to S&C—U.S. Employees Only



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This August 2012 edition of the S&C Short-Term Disability Pay booklet supersedes the January 2004 edition.

## **S&C Short-Term Disability Pay— An Introduction**

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The medical care costs of an injury or illness can be enormously expensive. Fortunately for eligible employees, the major portion of those expenses can be met through the S&C Health and Wellness Care Plan. But the financial pressures become even greater when a non-occupational injury or illness results in an employee being absent from work. Continuing expenses must be met with no regular pay to meet them. The purpose of S&C Short-Term Disability (STD) Pay is to provide income to help bridge this financial gap.

Short-Term Disability Pay is not a leave policy, it is a company pay practice for which eligible employees may qualify. S&C Electric Company retains the right to amend, modify, or terminate this pay practice and the associated provisions at any time.

This description should answer most of the questions you have about S&C's Short-Term Disability Pay practice. However, if you need additional information, please contact Health Services (S&C Ext. 2391) in Human Resources at S&C Chicago.



## The Basics

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S&C Short-Term Disability Pay can provide financial protection should an employee be off work for an extended period of time due to a non-occupational injury or illness.

### ***Eligibility***

An Hourly, Monthly, and Annual Pay Group employee is eligible for S&C Short-Term Disability Pay if he or she is assigned to one of the following S&C classifications: full-time or part-time working 30 or more hours per week. Eligible employees may apply for Short-Term Disability Pay when they are unable to work because of an injury or illness not covered by Workers' Compensation or a similar law. In addition, eligibility requires that:

- The employee and his or her physician provide sufficient medical information to support the inability to work that includes at a minimum, a diagnosis, prognosis, and treatment plan
- The employee is under the continuing care of a physician
- The employee is complying with recommended medical care
- The employee's medical care is considered appropriate and valid by S&C Health Services. **NOTE:** S&C Health Services utilizes the National Medical Disability Guidelines to establish optimal disability durations for absences due to injury or illness
- The amount of time off is in compliance with the National Medical Disability Guidelines utilized by S&C Health Services.

### ***Keeping Supervision Informed***

Whenever an employee is off work, the employee's supervisor must be notified about the absence. Even though an employee is in contact with Health Services in Human Resources at S&C Chicago, that does not mean the employee is relieved of the obligation to keep supervision informed regarding the length of an absence and plans for returning to work. Supervision can establish the frequency of such contracts.

### ***Keeping Health Services Informed***

Supervision and the employee are to notify Health Services in Human Resources at S&C Chicago of any medical-related absence of over five or more work days. This notification should be provided as soon as possible. Members of the Health Services team will provide the appropriate forms to the employee for completion by the employee and the employee's physician. If the employee is unable to contact Health Services, a member of the employee's immediate family may notify Health Services of the absence.

***Return to Work  
Release***

After any non-occupational absence for injury or illness of over five days or more or after any outpatient or inpatient surgery, a Return to Work Release providing sufficient medical documentation and completed by the treating physician must be personally returned to Health Services before an employee may report to work. Health Services must agree that the employee is fit to resume the essential functions of their job and may require further medical clearance prior to releasing the employee to return to work.

Non-Chicago-based employees are expected to work with S&C Health Services in Chicago and their location contacts to ensure the proper release is on file before returning to work.

***Coordination with  
Company Leave  
Policies***

Short-Term Disability Pay is not a leave policy, it is a company pay practice. Time away from work due to a non-occupational illness or injury is addressed under the company's leave policies, including S&C Policy Bulletin 101 titled "S&C's Family Medical Leave Act (FMLA)—All Pay Groups" and S&C Policy Bulletins 51 and 61 which address leaves of absences for Hourly Pay Group and Monthly and Annual Pay Group employees, respectively.

***Coordination of  
STD Pay with  
Other Sources of  
Income***

Short-Term Disability Pay coordinates with other sources of disability income, such as state disability pay or Illness Days available to Hourly Pay Group employees.

In the event that an overpayment of STD pay occurs, the employee is responsible for reimbursing S&C the amount of any overpayment. Overpayments of STD pay may also be recovered from the employee's regular pay.

***No Contract of  
Employment***

This pay practice is not intended to be, and shall not be construed as constituting, a contract of employment or other arrangement between any employee and the company.

## Payment Provisions

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### ***When Pay Is Issued***

**Hourly Pay Group Employees:** After Health Services receives sufficient medical documentation which includes, at a minimum, a diagnosis, prognosis, and treatment plan and subject to the provisions described under “Denial of S&C Short-Term Disability Pay,” on page 7, S&C Short-Term Disability payments for Hourly Pay Group employees can be made from the *fourth* scheduled working day of disability due to non-occupational injury or illness. When a disability lasts *more than 10 scheduled working days*, S&C Short-Term Disability Pay can be retroactively granted for the first three days of absence as well.

**NOTE:** Prior to the issuance of S&C Short-Term Disability Pay, the employee must utilize any unused “Illness Days,” as described in Policy Bulletin No. 51 titled “Excused Absences and Leaves of Absence—Hourly Pay Group.”

In addition, because S&C Short-Term Disability Pay is intended to replace *lost* pay, S&C Short-Term Disability Pay will not be granted for the same days that holiday pay or pay for Holiday Shutdown Days is issued.

S&C Short-Term Disability Pay for Hourly Pay Group employees is issued on Fridays through direct deposit and covers the eligible period of disability from the previous Sunday through Saturday. Properly completed forms submitted by Monday of the week following the week of absence can be processed in time to provide a payment the week following the absence. Forms submitted after that time will result in retroactive payment.

Payments continue as long as an eligible disability persists, up to a maximum of 26 weeks (182 calendar days) for each period of disability. (See the S&C Long-Term Disability Insurance Plan booklet for details on payments after 26 weeks.)

**Monthly and Annual Pay Group Employees:** Subject to the restrictions described under “Denial of S&C Short-Term Disability Pay,” a Monthly or Annual Pay Group employee’s base salary continues automatically for a continuous absence of one month or less due to a non-occupational injury or illness. As noted previously, any medical-related absence of over five days or more is to be reported to Health Services as soon as possible.

S&C Short-Term Disability Pay for Monthly and Annual Pay Group employees, is referred to as “salary continuance.” If a Monthly or Annual Pay Group employee is absent due to such an injury or illness for more than one month (30 days), salary continues only after receipt by Health Services in Human Resources at S&C Chicago of sufficient medical documentation.

Salary continuance payments for **Monthly Pay Group** employees of either 100% or 60% of pay are issued semimonthly as long as an eligible disability persists, up to a maximum of six months for each period of disability. (See the chart on page 6 for the Monthly Pay Group Short-Term Disability payment schedule.)

For **Annual Pay Group** employees, monthly salary continuance payments, equal to 100% of the employee's annual base salary divided by 12, are issued as long as an eligible disability persists, up to a maximum of six months for each period of disability.

***Continuing Period  
of Disability***

If one period of disability is followed by a second period of disability for the same illness or injury and occurs within 30 working days or less after the employee was able to return to work, then the second period of disability is considered to be a continuation of the first period of disability. Disabilities due to different causes are considered different periods of disability even if 30 working days or less separate the two periods of disability. Disabilities due to the same cause but separated by more than 30 consecutive working days of a return to work are considered separate periods of disability. When an employee returns to work while still experiencing the need for time away from work for covered continued treatments, Health Services will monitor these intermittent or reduced scheduled absences.

***Sufficient  
Medical  
Documentation***

S&C Form 758, S&C Electric Certification of Health Care Provider for Employee's Own Serious Health Condition FMLA (Family Medical Leave Act) and/or STD (Short-Term Disability Pay) is available in S&C Health Services and may be used to meet the documentation requirements for STD consideration. This form, when completed correctly, provides sufficient medical information for the review of STD pay and also provides information to support the application of specific provisions under the company's medical-related leave policies. Employees are encouraged to ask their treating physician to complete the S&C form whenever possible.

When sufficient medical documentation is provided in a format other than the S&C Form 758 and is accepted by Health Services, the provided documentation will also be accepted for the initiation of the relevant leave provisions under the Company's applicable leave policies (i.e. Policy Bulletin 101 titled "S&C Family Medical Leave Act (FMLA)—All Pay Groups" and S&C Policy Bulletins 51 and 61, which address leaves of absences for Hourly Pay Group Employees and Monthly and Annual Pay Group Employees respectively.)

**Calculation of  
S&C Short-Term  
Disability Pay**

**Hourly Pay Group Employees:** S&C Short-Term Disability Pay for Hourly Pay Group employees is equal to 60 percent of the employee's pay rate<sup>▲</sup> at the time of disability less the normal deductions. Payments are typically calculated for full days and/or full weeks of absence. Employees released for work for four hours a day or less are paid at short-term disability rates for the remaining hours in their standard work schedule. A partial payment is also made if an employee uses remaining illness hours and a partial day of pay results. In that situation, S&C Short-Term Disability Pay will be issued based on the remaining hours.

**Monthly Pay Group Employees:** The salary continuation schedule for Monthly Pay Group employees is:

Employee's Length of Continuous Service	Months of Salary Continuation	
	100% of Pay Rate	60% of Pay Rate
Less than 2 years	1	5
2 years, but less than 5 years	2	4
5 years, but less than 10 years	3	3
10 years, but less than 15 years	5	1
15 years and over	6	0

**Annual Pay Group Employees:** Annual Pay Group employees are eligible for up to six months of salary continuation at 100% of their pay rate.

**California  
Employees**

State of California employees absent for more than seven calendar days are expected to apply for California state disability benefits. Proof of state disability payments are to be provided to Payroll at S&C Chicago so that any additional amount due the employee to meet the short-term disability pay level can be paid.

In the event S&C Short-Term Disability Pay has been provided for days covered under state disability benefits, the employee is responsible for reimbursing S&C the amount of any overpayments.

<sup>▲</sup> "Pay rate" is the employee's base compensation plus shift premium, if applicable, when last actively at work. "Pay rate" does *not* include overtime pay, travel or other field premiums, retroactive pay increases, referral bonuses, special payouts, Seniority Cash Awards, Perfect Attendance Awards, patent awards, imputed income, or similar compensation.

***Denial of  
S&C Short-Term  
Disability Pay***

S&C Short-Term Disability Pay *will not be granted if:*

1. The employee is not in one of the eligible classifications, either a full-time employee or a part-time employee who works 30 or more hours per week
2. The proper medical documentation and S&C forms are not provided to Health Services
3. The employee is not under the continuing care of a physician
4. The employee is not complying with recommended medical care
5. The employee's medical care is not considered appropriate and valid by S&C Health Services
6. The amount of time off exceeds what S&C Health Services considers to be reasonable based on the National Medical Disability Guidelines
7. The employee does not report to work when work within the employee's medical restrictions is available
8. The employee is receiving Total Temporary Disability payments under Workers' Compensation.

S&C Short-Term Disability Pay will not be granted to Hourly Pay Group employees for the same days that holiday pay or pay for Holiday Shutdown Days is issued.

If a Monthly Pay Group or Annual Pay Group employee is eligible for salary continuation then holiday pay and pay for Holiday Shutdown Days (at 100% or 60%) are considered to be included in that pay.

***Pregnancy and  
S&C Short-Term  
Disability Pay***

Time off due to pregnancy qualifies for S&C Short-Term Disability Pay *only* when a physician considers the employee physically disabled, that is, unable to work. In other words, pregnancy itself is not reason to qualify for Short-Term Disability Pay; the condition must be "disabling" before payments can begin.

***Vacation Pay and  
S&C Short-Term  
Disability Pay***

When an employee is off work and is receiving S&C Short-Term Disability Pay, the employee may also request pay for any unused vacation. This option may be particularly helpful when an employee wants to minimize the time away from work or wants to make up for some portion of "lost" pay during the absence. Employees should contact their supervisors to request vacation pay in addition to S&C Short-Term Disability Pay.



***S&C Short-Term  
Disability Pay  
and Layoffs  
and Leaves of  
Absence***

During a layoff, S&C Short-Term Disability Pay eligibility would cease. Upon an employee's return to work following a layoff, S&C Short-Term Disability Pay eligibility would be reinstated as of the day of return to work. Should a disability have commenced during the layoff, S&C Short-Term Disability Pay may, if the disability persists, commence on the first day after expiration of the layoff.

During a leave of absence for reasons other than non-occupational injury or illness, S&C Short-Term Disability Pay coverage would cease. Should a disability commence during the leave, S&C Short-Term Disability Pay may, if the disability persists, commence on the first day after expiration of the leave.

***S&C Short-Term  
Disability Pay and  
Termination of  
Employment***

Upon termination of employment, S&C Short-Term Disability Pay eligibility ends. However, if an employee is receiving S&C Short-Term Disability Pay at the time of termination, payments for time off due to that specific disabling condition can continue as long as sufficient medical documentation is provided supporting a continued period of disability, but not longer than 26 weeks (6 months) from the onset of the disability. Proof of continued disability is required through regular submission to Health Services of sufficient medical documentation.

## **S&C Short-Term Disability Pay Documentation Requirements**

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### ***Required Supporting Documentation***

**Hourly Pay Group Employees:** As emphasized earlier, to receive S&C Short-Term Disability Pay, an Hourly Pay Group employee is required to submit sufficient medical documentation. The appropriate information must be provided by the employee and the attending physician. The S&C forms for this purpose are available from Health Services in Human Resources at S&C Chicago and may be obtained in person or by mail. The sooner sufficient medical documentation is completed and returned to Health Services, the sooner S&C Short-Term Disability Pay can begin.

**Monthly and Annual Pay Group Employees:** Monthly and Annual Pay Group employees are also required to submit sufficient medical documentation for any absences of over five or more days. For a continuous absence of one month or less due to non-occupational injury or illness, a Monthly or Annual Pay Group employee's salary (based on pay rate) continues automatically while paperwork is being processed.

In the event sufficient medical documentation is not received within the first 30 days of an absence, pay will cease until paperwork is provided.

**NOTE:** S&C Form 758, S&C Electric Certification of Health Care Provider for Employee's Own Serious Health Condition FMLA (Family Medical Leave Act) and/or STD (Short-Term Disability Pay) is available in S&C Health Services and may be used to meet the documentation requirements for STD consideration. This form, when completed correctly, provides sufficient medical information for the review of STD pay and also provides information to support the application of specific provisions under the company's medical-related leave policies. Employees are encouraged to ask their treating physician to complete the S&C form whenever possible.

When sufficient medical documentation is provided in a format other than the S&C Form 758 and is accepted by Health Services, the provided documentation will also be accepted for the initiation of the relevant leave provisions under the Company's applicable leave policies (i.e. Policy Bulletin 101, titled "S&C Family Medical Leave Act [FMLA]—All Pay Groups" and S&C Policy Bulletins 51 and 61, which address leaves of absences for Hourly Pay Group Employees and Monthly and Annual Pay Group Employees respectively.)

### ***Prolonged Absences or Medical Extensions***

For a prolonged absence, or when a period of absence is extended due to medical reasons, the employee will be required to submit updated supporting documentation to Health Services in Human Resources at S&C Chicago certifying to the continued disability as requested by S&C Health Services.



***Leave of Absence  
Notification***

A member of the staff in Health Services will generate the “Medical-Related Leave of Absence Notification” for medical-related absences coordinated through Health Services.

***Return from  
Medical Absence***

Upon return from a leave of absence due to non-occupational injury or illness of over five days or more or after an outpatient or inpatient surgery, the attending physician must provide sufficient medical documentation to support a “Return to Work Release.” The employee is responsible for providing a complete “Return to Work Release” to Health Services in Human Resources at S&C Chicago.

Health Services will review all “Return to Work Release” information and determine if the resumption of normal work duties is appropriate or if a reasonable accommodation is required.

A member of the staff in Health Services will generate the “Return from Leave of Absence Notification” for medical-related absences coordinated through Health Services.

***Appeal of  
Denied Claim***

If a request for Short-Term Disability Pay is denied, Health Services in Human Resources at S&C Chicago will notify the employee of the reason(s) for the denial of the claim. The employee may appeal the denial within 15 calendar days after receiving notification. The employee should submit a written appeal, requesting a review, and stating the reason(s) why the employee believes the request was improperly denied, to the Director—Benefit Services at S&C Chicago, who will review the appeal. Within 45 calendar days after submitting an appeal, the employee will be notified of the appeal decision and the reason(s) for the decision. If special circumstances require an extension of time for processing, the employee will be notified of the reason(s) for the extension, and a decision shall be made no later than 90 calendar days following receipt of the request for review.

The Director—Benefit Services has the discretionary authority to interpret and administer the provisions of the pay practice and to make factual determinations as to whether any individual is eligible to receive pay under this pay practice.

## **Additional Help and Information**

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Health Services' aim is to provide information, services, and referrals to support a healthy and productive workforce. When an individual experiences an extended absence due to a non-occupational illness or injury, Health Services' goal is to partner with that individual, in conjunction with their health care providers, to ensure a speedy recovery and a safe return to work. Even when there may be medical restrictions, Health Services can often arrange a transitional or part-time assignment for a medically restricted employee until they are back "up to 100%."

Please feel free to contact Health Services (S&C Ext. 2391) in Human Resources at S&C Chicago should you have any medical-related questions about your injury or illness, or should you need help with finding a physician.

### **Important Phone Number:**

**S&C Health Services—Chicago 773-338-1000 Ext. 2391**

S&C Electric Company  
6601 N. Ridge Boulevard  
Chicago, Illinois 60626-3997

**RETIREMENT CHECKLIST**Date of Discussion/Meeting: August 20, 2015

Employee Name:	<u>RICHARD BASCHER</u>	Dept #	<u>712</u>	Marital Status	<u>Single</u>
Emp ID #	<u>1749</u>	Date of Retirement:	<u>8-29-15</u>	Spouse Name	
Date Of Hire	<u>11-19-1962</u>	Yrs of Service:	<u>52 yrs, 9 mos</u>	Spouse DOB	
Date of Birth	<u>6-1-1941</u>	AGE	<u>74</u>	Spouse AGE	

**Verify Benefit Coverage's**☒ **Medical Coverage**☒ YES☐ NOCoverage Level - ☐ Employee ☐ Emp + 1 ☐ Family☒ **Dental Coverage**☒ YES☐ NOCoverage Level - ☐ Employee ☐ Emp + 1 ☐ Family☐ **Vision Coverage**☐ YES☐ NOCoverage Level - ☐ Employee ☐ Emp + 1 ☐ Family☒ **Eligible for Health Plan Coverage Continuation**☐ YES - Provide Early Retiree Continuation Coverage Form☐ **Retiree Coverage Continuation Form Returned**☐ NOT Eligible☒ NO - Over 65, need to go to Medicare☒ **Medicare Eligible -**☒ YES - Complete Provide Proof of Medical Coverage document ~~(Form)~~☐ NO*provided document for Medicare*☒ **COBRA - provide information & election form**☐ Yes☐ No☐ Employee 29 mo. Spouse/ Dependent \_\_\_\_\_29 mo.

S&amp;C000503

## RETIREMENT CHECKLIST

- ☒ **Transit Benefit Participant**
- ☐ YES - **Terminating employees** may submit a request for a transit check prior to their termination date, up to the maximum monthly amount of \$230. Otherwise the funds will be forfeited.
  - ☒ NO
- ☒ **YMCA Membership –**
- ☐ YES
  - ☒ NO
- ☒ **Verify Effective Date of Retirement**
- ☐ 8-29-2015 (LTD Retirement)
- ☒ **Last Day Worked**
- ☐ 8-27-2014
- ☒ **Supervisor Name** CHRIS ROMAN
- ☐ Notification sent to Supervisor
- ☐ **Cake & Coffee (55 and 3yrs. service)** DATE Not sure, need to see if he can return w. Reservations!
- ☐ YES
  - ☐ NO
- ☐ **Luncheon (55 and 3yrs. service)** DATE \_\_\_\_\_
- ☐ YES
  - ☐ NO
- ☐ **Company Store Items – up to \$100 in merchandise**
- ☐ **Charitable Donation - \$100 - Provide Donation election form**
- ☐ Misericordia Heart of Mercy
  - ☐ United Way
  - ☐ Community Health Charities
- ☐ **Picture for Volts & Jolts**
- ☐ Employee needs to schedule a date & time with Linda Lee to have photo taken.
- ☐ **Provide Linda Lee with retirement date for Calendar of Events**
- ☐ **Retirement Blue Binder / Proclamation Statement**
- ☐ Contact Supervisor
  - ☐ Send Supervisor sample invitation.

S&C000504

## RETIREMENT CHECKLIST

☒ **V & J Mailing**

☒ YES

☐ NO

☐ Yes – Electronic Version

☐ E-Mail Address information \_\_\_\_\_

☒ **Quarter Century Club Member**

☒ YES

☐ NO

☐ **Gary Tagtmeier – Financial Services**

☐ Inform Employee that they can meet with Gary Tagtmeier for 1 hr. session for up to 1 year from Retirement Date for Financial Advice.

☐ Provide them with Gary Tagtmeier's contact information.

☐ **Create Retiree Index Card for File**

☐ **Update Enterprise with Retirement/Termination Dates**

**401k / KSOP DOCUMENTS**

☐ 401k Former Participant Letter

☐ Special Tax Notice

☐ Vanguard Statement

☒ Vanguard Loan

☐ YES - Provide Loan Waiver

☐ Vanguard ESOP Distribution Form

☐ Vanguard Non-ESOP Distribution Form

☐ Vanguard Direct Rollover Authorization

*Forms & information  
provided on 8.20-15*

**Why are you Retiring now and what are your plans for Retirement?**

☒ Provide Retiring Team Member information Form –

☐ Send form to Jane Seiberling for V&J

S&C000505

Provided Rich all information regarding Separation

- Informed him that he has to be cleared By Health Services to Return to Work.
- If he is not cleared to Return then we will proceed with termination and it will be an LTD Retirement.

Discussed with Rich that this is our policy regarding separation that if an employee is out for 1 year and they are not able to return at that point they are separated.

# S&C Long-Term Disability Insurance Plan

Applicable to S&C–U.S. Employees Only



Printed copies are available from Benefit Services.

[Click here to request a paper copy.](#)

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This August 2012 edition of the S&C Long-Term Disability Insurance Plan booklet supersedes the January 2004 edition and includes revisions effective January 1, 2011.

## **S&C Long-Term Disability Insurance Plan— An Introduction**

Long-term disability. We don't like to think about it. Severe illnesses or injuries that keep us off the job for nine months, a year, five years, the rest of our lives. . . . such disabilities happen only to "other" people.

But just suppose *you* are stricken with a long-term disability. Could you meet the continuing expenses of day-to-day life if month after month you had no income?

S&C Electric Company *has* thought about long-term disability. In fact, S&C was one of the first companies in the Chicago area to institute a comprehensive long-term disability insurance plan to provide employees with an income during disability due to illness or injury. S&C's long-term disability payments are among the most generous anywhere.

Coverage under the S&C Long-Term Disability Insurance Plan is free to you as an S&C employee and is provided under a contract with the designated long-term disability insurance carrier.▲

Details of the S&C Long-Term Disability Insurance Plan are explained on the following pages. We urge you to read this Summary Plan Description carefully and bring any questions you may have to Benefit Services (S&C Extension 2535) in Human Resources at S&C Chicago.

The S&C Long-Term Disability Insurance Plan stands ready to provide earnings protection . . . when you need it most.

In the event of any discrepancies between this summary plan description and the Plan's Group Contract the terms and conditions of the Group Contract will prevail.

▲ The designated long-term disability insurance company is the company selected by S&C Electric Company to provide the benefits available under the S&C Long-Term Disability Insurance Plan to eligible S&C employees or their designated beneficiaries. At the time of publication of this booklet, the designated insurance company is The Prudential Insurance Company of America.



## The Basics

The S&C Long-Term Disability Insurance Plan provides earnings protection for an employee during periods of illness or injury lasting longer than 182 calendar days. (During the first 182 calendar days, known as the "qualifying period," earnings protection is provided through other components of the S&C Employee Benefits Package.)

### Definition of "Disability"

Under the S&C Long-Term Disability Insurance Plan, an employee is considered to be disabled if:

1. During the first 24 months following the qualifying period, the employee is limited from performing the material and substantial duties of his or her occupation due to a non-occupational or occupational illness or injury and if the employee has a 20% or more loss in the monthly equivalent of their pay rate due to the same illness or injury.
2. After the qualifying period plus the next 24-month period, the employee is unable to perform the duties of *any* gainful occupation for which the employee is reasonably fitted by education, training, or experience.
3. The employee is under continuing medical supervision and treatment considered satisfactory by the designated insurance carrier. (The designated insurance carrier retains the right to require that a disabled employee submit to a physical examination by a physician of its choice.)

### Eligibility

Subject to the plan's pre-existing condition exclusion explained on page 3, an S&C employee is eligible for coverage under the S&C Long-Term Disability Insurance Plan if he or she is assigned to one of the following S&C classifications: full-time or part-time working 30 or more hours per week. Dependents are *not* eligible.

### Employee Enrollment

On the day the employee begins work, he or she is asked to sign S&C Form 219, "S&C Benefits Enrollment Card." Completion of this card enrolls the employee in the S&C Long-Term Disability Insurance Plan.

### Effective Date of Coverage

S&C Long-Term Disability Insurance Plan coverage becomes effective on the day the employee begins work.

### Ineligibility for Employee Coverage

An employee is ineligible for S&C Long-Term Disability Insurance Plan coverage if he or she is not classified as a full-time S&C employee or a part-time employee who works 30 or more hours per week.

### Pre-existing Condition Exclusion

Coverage for a pre-existing condition is excluded. An employee has a pre-existing condition if the employee received medical treatment, consultation, care, or services including diagnostic measures, or took prescribed drugs or medicines in the 30 days just prior to the effective date of coverage; or the employee had symptoms for which an ordinarily prudent person would have consulted a health care provider in the 30 days just prior to the effective date of coverage; *and* if the employee's disability begins in the first five days after the effective date of coverage and results from, or is related to, the medical condition or symptoms experienced during the 3 months prior to coverage.

### No Employee Cost for Coverage

The S&C Long-Term Disability Insurance Plan is non-contributory for employees. Nothing is deducted from employee paychecks to cover the cost of coverage.

### Plan Administration

The administrator of the S&C Long-Term Disability Insurance Plan is S&C Electric Company. All claims are initiated by Benefit Services in Human Resources at S&C Chicago pursuant to claim instructions set forth by the designated insurance carrier. Final decisions regarding claims are made by the designated insurance carrier. The contract year and plan year are both the calendar year.

### No Contract of Employment

This plan is not intended to be, and shall not be construed as constituting, a contract of employment or other arrangement between any employee and the company.

Payment Provisions

Payment Accrual

Payments under the S&C Long-Term Disability Insurance Plan accrue from the 183rd day of disability. Checks are issued monthly by the designated insurance carrier.

Maximum Payment Period

Once disability payments begin prior to age 60, these payments may continue as long as an employee is disabled up to age 65. If an employee's disability is not permanent and the employee recovers before age 65, disability payments will be discontinued. If an employee's disability payments begin at age 60 or older, the maximum payment period is based on the following schedule:

Age at Time Disability Payments Begin	Maximum Duration of Payments
Under age 60	To age 65
Age 60	60 months
61	48 months
62	42 months
63	36 months
64	30 months
65	24 months
66	21 months
67	18 months
68	15 months
69 and over	12 months

Disabilities with a Limited Payment Period

Disabilities due to mental illness have a limited payment period of up to 24 months (or the maximum period of payment, whichever comes first) unless the employee is confined to a hospital or institution for such illness.

Mental illness is defined as a psychiatric or psychological condition regardless of cause, such as schizophrenia, depression, manic depressive or bipolar illness, anxiety, personality disorders and/or adjustment disorders, or other conditions. These conditions are usually treated by a mental health provider or other qualified provider using psychotherapy, psychotropic drugs, or other similar methods of treatment.

Amount of Payment

Without having all the details relating to a particular employee's case, this summary plan description cannot specify precisely how much money an employee would receive per month if qualified for payments under the S&C Long-Term Disability Insurance Plan. However, the formula used to calculate the plan's monthly payments (except in the case of employment during disability explained on page 6) is as follows:

The Basic Payment is based upon 60% of the employee's monthly pay rate\*. However, this payment will be reduced if the sum of the following other sources of income♦, when added to the Basic Payment, exceeds 75% of the pay rate: (1) payments from any other group disability or retirement plan (excluding the S&C 401(k) Retirement Savings and Employee Stock Ownership or other company provided stock plans), (2) disability or retirement payments from Social Security or any similar plans or act, (3) salary continuance, (4) payments from the Veterans Administration, and (5) payments from any state disability program including workers' compensation. If this total does exceed 75% of the employee's monthly pay rate, the amount of the excess will be deducted from the Basic Payment.

In no event will payments under the plan be less than \$100 per month or more than \$10,000 per month.

NOTE: Lump sum payments from workers' compensation are converted to monthly amounts for the purposes of the 75%-limit test.

Long-term disability payments provided under the plan are considered taxable income and are subject to federal tax and may be subject to state taxes.

Increases in Social Security payments occurring after completion of the 182-day qualifying period and designation of the initial Social Security award will not affect payments under the plan.

When calculating the 75% limit described previously, a family's total Social Security payments are considered—the employee's Social Security disability or retirement payment plus the related spouse's and children's payments. Once a spouse's or child's payment is discontinued, however, the 75% limit is subject to recalculation.

If an employee is or may be eligible to receive Social Security disability or retirement payments, the employee must apply for those payments. When the amount of the payments is known or when the claim is denied, the employee must give Benefit Services in Human Resources at S&C Chicago a copy of the Social Security Award Certificate or denial letter as soon as possible.

\* "Pay rate" is the employee's base compensation plus shift premium, if applicable, when last actively at work. "Pay rate" does not include overtime pay, travel or other field premiums, retroactive pay increases, referral bonuses, special payouts, Seniority Cash Awards, Perfect Attendance Awards, patient awards, imputed income, or similar compensation.

♦ Only income which commences coincident with or subsequent to the inception of the disability will apply.

### **Employment During Disability**

If, during the first 24 months that a disabled employee receives payments under the S&C Long-Term Disability Insurance Plan, he or she becomes re-employed at S&C in any occupation or is employed elsewhere in an occupation that is considered appropriate by the designated insurance carrier, the disabled employee is entitled to a "Work Incentive Benefit," which is calculated as follows:

1. During the first 12 months when a disabled employee is working, the employee's disability payment will not be reduced as long as the employee's earnings plus the gross (before tax) disability payment do not exceed 100% of the employee's pay rate.<sup>▲</sup>
2. Beyond 12 months of disability payments, when a disabled employee is working, the employee will receive disability payments based on the percentage of income the employee is losing due to disability. The percentage of loss is applied to the previous disability payment. For example, a 50% loss of income would mean the disabled employee would receive 50% of the disability payment. This payment is in addition to the earnings from work.

3. During the first 24 months of disability payments, if an employee's earnings exceed 80% of former pay rate, the designated insurance carrier will no longer consider the employee disabled and payments will cease. Beyond 24 months of disability payments, if an employee's earnings exceed 60% of former pay rate, the designated insurance carrier will no longer consider the employee disabled and payments will cease. In no event will payments under the plan be less than \$100 per month or more than \$10,000 per month.

If, at any time during disability, a disabled employee is engaged in any occupation that is not considered appropriate by the designated insurance carrier for rehabilitation, disability payments will cease.

S&C Benefit Services is to be contacted as soon as possible in the event an employee is released to return to modified work prior to his or her separation from employment with S&C Electric Company.

<sup>▲</sup> "Pay rate" is the employee's base compensation plus shift premium, if applicable, when last actively at work. "Pay rate" does not include overtime pay, travel or other field premiums, retroactive pay increases, referral bonuses, special payouts, Seniority Cash Awards, Perfect Attendance Awards, patent income, imputed income, or similar compensation.

### **Continuing Proof of Disability**

Upon request from the designated insurance carrier, a recipient of payments under the S&C Long-Term Disability Insurance Plan must, within 30 calendar days, provide continuing proof of disability.

### **Recurrent Disability**

If an employee becomes disabled, returns to work, and then becomes disabled again, the employee must fulfill the qualifying period again (182 calendar days), *unless* the second period of disability results from the same cause as the first period of disability *and* the second period of disability begins less than six months after the end of the first period of disability. If both of these conditions are met, the qualifying period for the second period of disability will be waived. Payments during the second period of disability will be calculated using the same pay rate that was used when calculations were made for the first period of disability.

### **Discontinuation of Payments**

S&C Long-Term Disability Insurance Plan payments will discontinue in the following instances:

1. If, in the opinion of the designated insurance carrier, the employee ceases to be disabled as defined by the plan.
2. If, as required by the designated insurance carrier, the employee fails to furnish proof of continuing disability.
3. If, as required, the employee fails to submit to a medical examination by a physician chosen by the designated insurance carrier.
4. If, during the first 24 months of payments, the employee is able to work in his or her regular occupation on a part-time basis, but chooses not to.
5. If the employee reaches the end of the maximum period of payment.
6. If the employee's disability earnings exceed the amount allowed under the plan.
7. If the employee dies.

### **Ineligible Causes of Disability**

No payments will be made for disabilities resulting directly or indirectly from:

1. War or any act of war
2. Service in the armed forces of any country
3. Any attempt at suicide or intentionally self-inflicted injury while sane or insane

## Procedures for Filing a Claim

4. Participation in a riot.

5. Engaging in a criminal act

6. A pre-existing condition as defined by the plan.

**NOTE:** An employee is not eligible for payments for any period of disability during which the employee is incarcerated.

### Coverage During a Leave of Absence or Layoff

During a leave of absence for occupational or non-occupational illness or injury, an employee's S&C Long-Term Disability Insurance Plan coverage is continued at S&C's expense for up to 12 months. During other kinds of leaves and during a layoff, an employee's coverage is discontinued.

### Termination of Employment

If employment terminates, an employee's S&C Long-Term Disability Insurance Plan coverage ceases immediately. However, if the employee is disabled and is fulfilling the 182-calendar-day qualifying period at the time of termination, payments under this plan may commence at the end of the qualifying period and may continue as long as the employee remains disabled up to the maximum payment period.

An employee who is absent from work for a period of twelve consecutive months due to a disability will be separated from the active payroll. Prior to separation from the active payroll, the employee will be contacted to update the status of his or her disability and to determine if a reasonable accommodation consideration is appropriate. Employees are asked to contact Benefit Services in Human Resources at S&C Chicago with any questions regarding this plan or the treatment of other S&C benefits when disabled.

### Survivor Benefit

If an S&C employee is receiving or is eligible to receive benefits under the S&C Long-Term Disability Insurance Plan and if that employee dies, a lump sum death benefit equal to three months of the gross disability benefit will be paid to the employee's beneficiary(ies) as designated under the S&C Life Insurance Plan.

When an employee has been unable to work because of an illness or injury for an extended period of time (normally 150 calendar days) and it is reasonable to believe the employee will remain off work a minimum of an additional 32-days (thereby fulfilling the 182-calendar-day qualifying period), a claim for S&C Long Term Disability Insurance benefits should be started. Benefit Services in Human Resources at S&C Chicago will provide a Long-Term Disability Claim form along with instructions on how to complete the form to the disabled employee.

**The completed employee-portion and physician-portion of the form must be returned to Benefit Services for transmittal to the designated insurance carrier.**

Failure to complete the forms in a timely manner will delay the processing of the claim and may result in a delay of any available benefits under the plan. A delay in payment of benefits under this plan for which the employee is eligible will disrupt the disabled employee's income stream.

The designated insurance carrier of course, will require thorough and complete medical information before payments are approved. To obtain such information, if the claim forms do not contain sufficient data, the designated insurance carrier may ask health care providers to release copies of the employee's medical records. (In applying for payments, the employee authorizes release of such information on the "Claimant's Authorization" portion of the designated insurance carrier form.) The designated insurance carrier may also ask the employee to undergo a physical examination conducted by a physician chosen by the designated insurance carrier. The designated insurance carrier must also be shown that the employee is under the regular care of a doctor.

An employee must submit a claim for benefits within the 90-calendar-day period following the qualifying period. If it is not possible to give proof within 90 calendar days, it must be given no later than one year after the time proof would otherwise be required except in the absence of legal capacity.

Legal action regarding a claim can be filed 60 calendar days after proof of claim has been given and up to three years from the time proof of claim is required, unless otherwise provided under federal law.

## Time Limit for Submitting Claims

### ***Appeal of Denied Claim***

If a claim is denied, the designated insurance carrier will send the employee written notification of the reason(s) for the denial of the claim. The employee may appeal the denial within 182 calendar days after receiving the written notification. The employee should submit a written appeal, requesting a review, and stating the reason(s) why the employee believes the claim was improperly denied, to the Benefit Services Director at S&C Chicago who will forward the appeal to the designated insurance carrier. Within 45 calendar days after submitting an appeal, the employee will be notified in writing of the appeal decision and the reason(s) for the decision. If special circumstances require an extension of time for processing, the employee will be notified of the reasons for the extension, and a decision shall be made no later than 90 calendar days following receipt of the request for review.

### ***Claim Overpayment***

The designated insurance carrier has the right to recover overpayments due to:

- Fraud
- Any error the designated insurance carrier makes in processing a claim
- An employee's receipt of deductible sources of income.

### ***Special Note of Caution***

It is a crime for any person to knowingly and with intent to injure, defraud, or deceive the designated insurance carrier, or provide any information, including filing a claim that contains any false, incomplete, or misleading information. These actions, as well as submission of materially false information, will result in denial of the claim and the individual is subject to prosecution and punishment to the full extent under state and/or federal law. The designated insurance carrier will pursue all appropriate legal remedies in the event of insurance fraud.

Additionally, if the employee is still on the active payroll and is proven to have knowingly provided false, incomplete, or misleading information to the designated insurance carrier with the intent to access benefits for which they are not entitled, the employee will be separated from employment with S&C Electric Company.

### ***Designated Insurance Carrier***

Effective February 1, 2008, the designated insurance carrier selected by S&C Electric Company to administer benefits under the plan for eligible employees and their designated beneficiaries is:

The Prudential Insurance Company of America  
80 Livingston Avenue  
Roseland, New Jersey 07068  
1-866-438-9026  
Group Contract No. G-45887-IL.

## **Your ERISA Rights**

*S&C has always administered its employee benefit plans prudently and in the best interests of employees and dependents.*

*Printed below is a statement of your rights taken from Chapter 29, Code of Federal Regulations, Part 2520.102-3(i)(2), U.S. Department of Labor.*

"As a participant in the S&C Long-Term Disability Insurance Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

### ***Receive Information About Your Plan and Benefits***

"Examine, without charge, in the S&C Benefit Services Office in Human Resources at S&C Chicago, all documents governing the Plan, including insurance contracts and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor.

"Obtain, upon written request to the Director—Benefit Services, copies of documents governing the operation of the Plan, including insurance contracts and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. S&C may make a reasonable charge for the copies.

"Receive a summary of the Plan's annual financial report. S&C is required by law to furnish each participant with a copy of this Summary Annual Report."

### ***Prudent Actions by Plan Fiduciaries***

"In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA."



### **Enforce Your Rights**

"If your claim for a welfare benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

"Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such case, the court may require S&C to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of S&C.

"If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in a Federal court.

"If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous."

### **Assistance with Your Questions**

If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from S&C, you should contact the nearest Regional or District Office of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, listed in your telephone directory or visit the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa). (Address and phone numbers of the Regional and District EBSA offices are available through the EBSA's website.) You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hot line of the Pension and Welfare Benefits Administration.

### **Additional Information**

This Summary Plan Description has attempted to answer most of your questions about the S&C Long-Term Disability Insurance Plan. However, if you have additional questions, you are urged to bring them to Benefit Services in Human Resources at S&C Chicago.

The contents of this S&C Long-Term Disability Insurance Summary Plan Description are intended to be as complete and correct as possible and to explain in simple language the essential features of the plan. However, this information does not constitute the Group Policy and is not a contract of insurance. In the event of any conflict between this summary plan description and Group Policy, the provisions of the group policy will control.

S&C expects the S&C Long-Term Disability Insurance Plan to be permanent, but since future conditions affecting S&C cannot be anticipated or foreseen, S&C must necessarily and does hereby reserve the right to modify, amend, or terminate this plan at any time at its sole discretion. In the event of termination of the plan, coverage thereunder will cease immediately. Individuals whose disabilities commenced prior to plan termination will be eligible to receive payment for such disability, subject to the terms and conditions of the plan.

Should anyone have reason to file a lawsuit involving the S&C Long-Term Disability Insurance Plan, legal process should be directed to the Corporate Secretary, S&C Electric Company, 6601 North Ridge Boulevard, Chicago, Illinois 60626-3997.

S&C Electric Company  
6601 North Ridge Boulevard  
Chicago, Illinois 60626-3997

Employer Identification Number: 36-1747665

S&C Long-Term Disability Insurance Plan: Plan Number 502

# Exhibit I

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
RICHARD RASCHER,	)	
Plaintiff-Intervenor,	)	Civil Action No.
	)	E1:17-CV-06753
-vs-	)	
	)	
S & C ELECTRIC COMPANY,	)	
	)	
Defendant.	)	

VOLUME I

The deposition of KATHLEEN CLAWSON,  
called for examination pursuant to notice and  
the Rules of Civil Procedure for the United  
States District Courts pertaining to the taking  
of depositions, taken before Allison D. Weber,  
CSR, a notary public within and for the County  
of Cook and State of Illinois, at 500 West  
Madison Street, Suite 2000, Chicago, Illinois,  
on March 13, 2019, at the hour of 9:50 o'clock  
a.m.

Reported by: Allison D. Weber, CSR  
License No.: 084-002238



1 APPEARANCES:

2  
3 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BY: MS. DIANE I. SMASON and

4 MR. ETHAN M. COHEN

500 West Madison Street, Suite 2000

5 Chicago, Illinois 60661

(312) 869-8120

6 diane.smason@eeoc.gov

Appearing on behalf of the Plaintiff;

7  
8 JOETTE S. DORAN & ASSOCIATES, P.C.

9 BY: MS. JOETTE S. DORAN

2300 North Barrington Road, Suite 400

10 Hoffman Estates, Illinois 60169

(847) 462-5993

11 joette@joettedoran.com

Appearing on behalf of the

12 Plaintiff-Intervenor,

13 Richard Rascher;

14  
15 FOX SWIBEL LEVIN & CARROLL LLP

BY: MR. STEVEN L. BRENNEMAN

200 West Madison Street, Suite 3000

16 Chicago, Illinois 60606

(312) 224-1200

17 sbrenneman@foxswibel.com

Appearing on behalf of the Defendant,

18 S & C Electric Company.

1 (Witness sworn.)

2 KATHLEEN CLAWSON,  
3 called as a witness herein, having been first  
4 duly sworn, was examined and testified as  
5 follows:

6 EXAMINATION

7 BY MS. DORAN:

8 Q. Okay. Can you please state your full  
9 name for the record and spell your last name?

10 A. It's Kathleen Clawson, C-l-a-w-s-o-n.

11 MS. DORAN: Let the record reflect  
12 this is the discovery deposition of  
13 Kathleen Clawson taken pursuant to notice  
14 on today's date by agreement of the  
15 parties.

16 BY MS. DORAN:

17 Q. Miss Clawson, I'm going to be asking  
18 you a series of questions today. If at any time  
19 you don't understand me, please let me know,  
20 otherwise I'm going to assume that you  
21 understood my question that you're answering me  
22 in response, okay?

23 A. Sure.

24 Q. And also have all your answers be

1           Q.    Who has access to the electronic  
2    medical record system?

3           A.    The nurses, myself and the  
4    administrator.

5           Q.    Before the appointment with  
6    Dr. Khanna, could you go into that system and  
7    review the medical information about  
8    Mr. Rascher?

9           A.    No.

10          Q.    Why not?

11          A.    Because, number one, it was, like, six  
12    years old, and what was current was not so much  
13    the medical information, at least on that  
14    particular day, but Mr. Rascher's functional  
15    ability was what was in question at that point.

16          Q.    Could you explain that?

17          A.    Well, it's hard to say, I mean, what  
18    could be causing all kinds of medical issues,  
19    okay. But what I observed on the day that  
20    Mr. Rascher was sitting in the chair and was  
21    not -- had difficulty getting up, he had a lot  
22    of functional issues with that, strength. He  
23    looked very fragile, and his balance when he  
24    walked, he was very unbalanced.

1 much consider anything.

2 Q. When you observed Mr. Rascher, how did  
3 you observe him ambulating? Was there any  
4 assistive device?

5 A. He had a cane.

6 Q. And from your observation, what did  
7 you notice as to how he was ambulating with the  
8 cane?

9 A. He was shuffling. He was kind of  
10 weaving a little bit side to side. He was  
11 walking extreme -- very, very slow. The people  
12 that were following him were staying close.

13 To kind of describe it a little  
14 bit better, it's kind of my rehab background a  
15 little bit, you can have people that can be  
16 independent, they can be supervised, you can get  
17 into where you're contact guard, and I would say  
18 when he was walking he needed a contact guard  
19 and he should have had a walker. He would have  
20 been much more stable with a walker.

21 Q. Did you consider that Mr. Rascher  
22 could return to work if he had a walker?

23 A. Well, that was the reason for having  
24 Dr. Khanna evaluate him. But he wasn't -- even

1 with a walker, he was very unsteady. He  
2 couldn't hardly get out of his chair. It took,  
3 like, three, four attempts.

4 I was going to get him a  
5 wheelchair. And I was standing to the side, I  
6 was just about ready to say can we get a  
7 wheelchair and somebody in the group, they asked  
8 him, because he couldn't get out of the chair,  
9 they said, "Do you need some help?" And he  
10 said, "No, I'm fine."

11 And so everybody kind of backed  
12 off a little bit, okay. But I saw everybody  
13 walking with him. And everybody was kind of  
14 waiting, I think, to see if he was going to  
15 start falling and they stayed close. That's  
16 what I observed.

17 So even a walker he would have  
18 been a little unsteady. We also own the parking  
19 lot, so people have to be able to get in from  
20 our parking lot into the building, and you can't  
21 get all the ice and snow out there, plus, you  
22 know, even if he had a walker, you have to get  
23 it out of the car. He wasn't able to really  
24 hold on to things, you know, and stand

1 independently. He was very unbalanced.

2 Q. You mentioned a wheelchair. Does  
3 S & C have wheelchairs on the premises?

4 A. I don't know if we do or not. We may  
5 have some.

6 Q. You mentioned that you were thinking  
7 of getting him a wheelchair. Is that what you  
8 stated?

9 A. No, I didn't state that. Oh, I did?  
10 I didn't mean to say that.

11 Q. Yes.

12 A. But, no, we didn't -- he didn't ask  
13 for a wheelchair. If anything, he said he  
14 wanted to walk by himself. He didn't want  
15 anything. He never submitted anything to us for  
16 that.

17 Q. Could Mr. Rascher have been  
18 accommodated to alleviate your concerns with  
19 respect to his balance and function if he were  
20 in a wheelchair?

21 A. I don't know. That would have to  
22 be -- he never asked for that, and he would  
23 still have to get out of his car into the  
24 building.

1           A.     We look at everybody individually  
2     in -- on our return-to-work program.

3           Q.     Were you aware on August 20th of 2015  
4     that Mr. Rascher came to visit Marcia Burton,  
5     that he walked from Health Services to where he  
6     worked to see Chris Roman, his supervisor? Are  
7     you aware of that?

8           A.     I was not aware of that at the time,  
9     no.

10          Q.     Would that have been important for you  
11     to know?

12          A.     Well, whether he did or whether he  
13     should are two separate questions because he was  
14     not stable enough to be in the plant, and, you  
15     know, just because somebody does something  
16     doesn't mean that it's okay or that it's right  
17     or they're safe.

18          Q.     You keep referring to the plant. What  
19     are you referring to?

20          A.     Well, it's a manufacturing company, so  
21     we have production areas, and then we have  
22     office areas.

23                     And so where Chris Roman's offices  
24     are are up in a mezzanine there's concrete steps

1 that go all the way up. There's maybe, I don't  
2 know how many steps, 20, 30, could be more, I  
3 don't know, it's quite a ways up, and in our  
4 production areas we have do not allow people to  
5 return to work with canes or boots, so they're  
6 not supposed to be in that area with assistive  
7 devices because of a fall risk.

8 And in addition to that, he was  
9 extremely unsteady, balance issues and going up  
10 and down steps.

11 Q. And that's all from your own  
12 observation, there's no objective medical  
13 information that you had?

14 A. No, that's not correct. Because when  
15 I saw him on the 8th --

16 Q. I'm not talking about the 8th. I'm  
17 talking on the 31st when he came in to see you,  
18 actually.

19 A. I wasn't aware that he -- I know he  
20 went up after I explained to him it was a safety  
21 issue. I'm not sure what date he went.

22 But I had a conversation with him  
23 and told him that I had real concerns and he  
24 shouldn't be in the plant.



1           A.     I have no idea.

2           Q.     You don't know one way or the other?

3           A.     I do not.

4                   MS. DORAN:   If you could mark this as  
5           Deposition Exhibit No. 3?

6                               (Whereupon, Clawson Deposition  
7                               Exhibit No. 3 was marked for  
8                               Identification, 03/13/2019.)

9   BY MS. DORAN:

10           Q.    Miss Clawson, I'm going to show you  
11   what we have marked as your Deposition  
12   Exhibit No. 3.   It's a multi-page document.   If  
13   you could take a look at this document?   Okay?

14           A.    Uh-hum.

15           Q.    Can you tell me which of these  
16   documents that Richard Rascher dropped off to  
17   you on September 8th of 2015?

18                   MR. BRENNEMAN:   Object to the form.

19                   THE WITNESS:   I am -- now that we have  
20   them here, I know that what I have is --  
21   there was doctors' notes.   There  
22   was -- I'm not sure which one I got on  
23   which date just looking at it here.   I also  
24   had physical therapy notes, and these are

1 not here.

2 BY MS. DORAN:

3 Q. Did Mr. Rascher bring you physical  
4 therapy notes?

5 A. I believe that he did. I have them,  
6 and I believe that he brought those in.

7 The medical, when you pull up out  
8 of our Medgate, the physical therapy notes come  
9 up with the doctors' notes.

10 Q. And what is Medgate?

11 A. Electronic medical record system.

12 Q. And how would these documents or the  
13 releases and the physical therapy notes become  
14 part of Medgate?

15 A. They get uploaded.

16 Q. And who does that?

17 A. The person that receives them uploads  
18 them.

19 Q. Since you were the individual that  
20 received these documents, would you have been  
21 the person that would have uploaded them?

22 MR. BRENNEMAN: What do you mean by  
23 these documents?

24 THE WITNESS: Well, I don't know if

1           these are all the ones -- some of these  
2           obviously were not because this is a letter  
3           I wrote on the 14th.

4   BY MS. DORAN:

5           Q.    Correct, the final document.

6           A.    So I had the physical therapy notes.  
7           It's possible the admin would have uploaded  
8           some, but normally what happens is when somebody  
9           comes in, you write your note, you upload the  
10          documents, so I had his physical therapy notes.

11                   The notes that we have for the --  
12          that were the 8/28, they're not by fax,  
13          they're -- I don't believe that they were mailed  
14          in, so I -- we have them. I believe Mr. Rascher  
15          handed me those. My recollection is that he  
16          handed me those.

17          Q.    Do you know for sure if he did so?

18          A.    I'm pretty sure that he did.

19          Q.    That --

20          A.    Back to '15, but I'm pretty sure he  
21          handed me the physical therapy notes.

22          Q.    Did anybody request that he bring in  
23          physical therapy notes?

24          A.    No.

1           Q.    According to the e-mail that we just  
2    looked at, he was going to bring in a doctor's  
3    release -- doctors' releases on September 8th;  
4    is that correct?

5           A.    Well, it just said -- it said doctor  
6    releases, but, you know, whatever he may  
7    perceive I can't speak for him, but we were  
8    given the physical therapy notes for the 28th.

9                   We did not receive any other  
10   physical therapy notes until later, but we had  
11   the physical therapy notes at that point.

12          Q.    Is there a way of verifying through  
13   your program the date the documents were  
14   actually received?

15          A.    No. But we had them before, and I  
16   referred to them in an e-mail that was sent to  
17   Dr. Khanna that we had the physical therapy  
18   notes. And I don't remember the date of that  
19   e-mail, but it was around this time, so I had  
20   them at that point.

21          Q.    In looking at Exhibit No. 3, can you  
22   tell me which particular releases Mr. Rascher  
23   brought in to you on September 8th of 2015?

24                   MR. BRENNEMAN: Object to form.

1           THE WITNESS: I can't with certainty  
2           say which ones of these documents on that  
3           date. But we had them in the system.

4                   And we only -- I only had contact  
5           with Mr. Rascher three times, so these  
6           were -- the documents were prior to the  
7           9/14.

8       BY MS. DORAN:

9           Q.    What did you do when you received the  
10           return-to-work authorizations from Mr. Rascher?

11           A.    What I did was I sent them to  
12           Dr. Khanna, and, you know, asked him to look at  
13           them.

14                   And he basically said that he  
15           still believed his assessment on that day was  
16           that Mr. Rascher was not able to function  
17           independently. I don't know his exact wording.  
18           You would have to read that.

19                   And we had the physical therapy  
20           notes which documented what I had seen and what  
21           I believe Dr. Khanna had seen, that Mr. Rascher  
22           was not functionally independent. He had  
23           balance issues.

24                   And so we figured what -- what the

1 determination was at that point was that we had  
2 confirmation from his physical therapist and  
3 Mr. Rascher's own statements within the therapy  
4 notes of what he could or could not do, so --

5 Q. Did you contact any of those doctors?

6 A. No, I did not.

7 Q. Did Dr. Khanna contact any of those  
8 doctors?

9 A. No, he did not.

10 MS. DORAN: Could you mark this as  
11 Clawson Deposition Exhibit No. 4, please?

12 (Whereupon, Clawson Deposition  
13 Exhibit No. 4 was marked for  
14 Identification, 03/13/2019.)

15 BY MS. DORAN:

16 Q. Miss Clawson, if you could take a look  
17 at what has been marked as your Deposition  
18 Exhibit No. 4? It's a multi-page document. And  
19 if you could take a brief look at that.

20 Do you recognize Deposition  
21 Exhibit No. 4 as a Health Services document?

22 A. I do.

23 Q. In the first page it says, Health  
24 Services sign-in sheet for Monday, 8/31/15; is

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1 attached documentation from his PMD and  
2 therapist to RTW." Does that mean he submitted  
3 documentation from his primary medical doctor?

4 A. Correct.

5 Q. And his therapist to return to work?

6 A. Correct.

7 Q. Looking at this e-mail, do you know  
8 what attachments you sent to Dr. Khanna?

9 A. I sent him the physician notes that he  
10 submitted and the therapy notes.

11 Q. And how do you know that you submitted  
12 therapy notes? Because this doesn't reference  
13 therapy notes, it says therapist return to  
14 work.

15 A. Right. He submitted documentation  
16 from his personal medical doctor and therapist.  
17 The only therapist is the PT notes. That's the  
18 therapist.

19 Q. I'm going to have you take a look at  
20 Exhibit No. 4 -- excuse me, Exhibit No. 3.  
21 Let's go to page -- if you go to Exhibit No.  
22 3.

23 A. Okay.

24 Q. If you'll take a look at page S & C

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1 000353. Do you see this return to work?

2 A. It's a work status report, yes.

3 Q. And it's from Dr. Matthew Jimenez?

4 A. That's his personal medical doctor.

5 Q. That is also his doctor that was  
6 treating him with respect to his orthopedic  
7 injuries, correct?

8 A. Yes, correct.

9 Q. Did Mr. Rascher submit this return to  
10 work to you?

11 A. I did receive this from him somewhere  
12 in there. I had it in my records, so I'm not  
13 sure if Mr. Rascher submitted this. There's  
14 not the -- there's no fax on it. If there's  
15 not a fax, my assumption is that -- so I'm  
16 assuming, yes, he submitted it on that date.

17 Q. When Mr. Rascher submitted his  
18 return-to-work authorizations, did he bring  
19 them to you in hand or did he fax them?

20 A. He brought them in hand.

21 Q. So if he brought them in hand, there  
22 would be no fax notations on the documents,  
23 correct?

24 A. Correct. But I wouldn't have



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1 considered the doctor his therapist. The  
2 therapist would have been the physical  
3 therapist.

4 Q. I'm sorry?

5 A. I wouldn't have considered the doctor  
6 as a therapist. He would have been one of the  
7 personal medical doctors. The therapist would  
8 have been the therapy notes.

9 Q. And with respect to the records that  
10 your stating -- that regard his physical  
11 therapy, are you stating emphatically 100  
12 percent certain that Mr. Rascher brought those  
13 records in to you?

14 A. Yes.

15 Q. You recall that specifically?

16 A. I remember him handing me the packet.  
17 And I remember the physical therapy notes in  
18 part of that -- I remember him giving me the  
19 physical therapy notes.

20 Q. Is there anything internally through S  
21 & C that can establish what attachments you  
22 sent to Dr. Khanna?

23 A. Not that I'm aware of.

24 Q. Why not?

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1           A.     Sometimes the clinic just gets busy  
2     and I wasn't able to make a phone call.

3           Q.     It goes on to state, "I did review the  
4     attachments, and although Mr. Rascher has  
5     submitted these from his personal physicians,  
6     based upon my examination last week, I feel  
7     he's unstable and at risk to injure himself if  
8     he was to return to work. Do you have a formal  
9     job description for his position? If so,  
10    perhaps we should request a formal FCE to be  
11    done before allowing him to return to work.  
12    Please call to discuss this. Thanks."

13                    You did not call him to discuss  
14    that?

15           A.     No.

16           Q.     Why not?

17           A.     Because we had all the physical  
18    therapy notes which documented everything he  
19    could or couldn't do. And to do a functional  
20    capacity eval, that's why you would have it, to  
21    see what somebody can do. And he already  
22    submitted the majority of that to us at this  
23    point.

24           Q.     Dr. Khanna makes no reference to

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1 physical therapy notes, does he?

2 A. No, he did not.

3 Q. He only makes reference to  
4 return-to-work authorizations from his --  
5 Mr. Rascher's physicians, correct?

6 A. Correct.

7 Q. He is asking if you have a formal job  
8 description for his position. You did not  
9 respond to that, correct?

10 A. Correct.

11 Q. He also says, "Perhaps, we should  
12 request a formal FCE to be done before allowing  
13 him to return to work." FCE is a functional  
14 capacity exam; is that correct?

15 A. Correct.

16 Q. And you didn't respond to that either?

17 A. No, I did, when I said -- first off,  
18 he said he was unsafe. That was the first  
19 thing. So if he's unsafe in the plant, can  
20 injure himself. Secondly, what I said was at  
21 this time and his notes also substantiate his  
22 current deficits and where he's at. It showed  
23 balance, strength. It showed much of that.  
24 And that -- at that point it wasn't necessary

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1 to have an FCE.

2 Q. Dr. Khanna makes no reference to his  
3 physical therapy notes; is that correct?

4 MR. BRENNEMAN: Asked and answered.

5 THE WITNESS: You have to ask Dr. Khanna.

6 BY MS. DORAN:

7 Q. I'm not asking that. I'm saying is it  
8 in this e-mail?

9 A. It's not in the e-mail.

10 Q. All he refers to is his physical  
11 physician's return-to-work authorizations; is  
12 that correct?

13 MR. BRENNEMAN: Asked and answered.

14 THE WITNESS: Correct. Just an e-mail  
15 conversation we are having regarding this case.  
16 He did not state that, no.

17 BY MS. DORAN:

18 Q. Dr. Khanna is proposing, perhaps, a  
19 formal functional capacity exam should be done  
20 before allowing him -- allowing him to return  
21 to work. So Dr. Khanna is making that  
22 consideration despite the fact that he's saying  
23 I still think he's unstable, but, hey, maybe we  
24 should have a functional capacity exam? That's

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1     what he's saying to you, correct?

2           A.     He didn't say we should have one.  It  
3     was a discussion should we have one.  When I  
4     told him we have the PT notes to substantiate  
5     it, he did not come back and tell me that this  
6     is what we should do.  And so we already had  
7     the notes.

8           Q.     By this e-mail, is he not presuming  
9     that Mr. Rascher is going to return to work?

10          A.     Not necessarily, no.

11          Q.     He states, "We should request -- "If  
12     so, we should request a formal functional  
13     capacity exam to be done before allowing him to  
14     return to work."  So he is considering the fact  
15     as to whether Mr. Rascher can return to work  
16     based upon his return-to-work authorizations,  
17     correct?

18          A.     You'd have to ask Dr. Khanna that.

19          Q.     I would have liked to if I would have  
20     had these e-mails.  That would have been very  
21     nice.  So I'll state for the record, I did not  
22     have these e-mails when we questioned Dr.  
23     Khanna because they were not produced by S & C  
24     Electric in this case, despite the fact that

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1 they were asked the day and months before we  
2 took the deposition. And despite the fact that  
3 there's a litigation hold, which we just talked  
4 about.

5 MS. DORAN: Mark this as Exhibit No. 8.

6 (WHEREUPON, said  
7 document was marked as  
8 Deposition Exhibit No. 8  
9 for Identification.)

10 BY MS. DORAN:

11 Q. Before we get to 8, let's go back to 6  
12 for a second. On the very first page of that  
13 document, S & C 00252, on the bottom of the  
14 document it's dated September 10th of 2015. Is  
15 that your response to Dr. Khanna in terms of  
16 the e-mail of September 10th, 2015, at 11:29  
17 a.m.?

18 A. Yes.

19 Q. Okay. In that e-mail you state,  
20 "Thanks, Dr. Khanna, I agree with your decision  
21 that he's not able to return to work safely at  
22 this time and his PT notes can also  
23 substantiate current deficits."

24 MR. BRENNEMAN: Just object. You

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1 mischaracterized what the e-mail says. You  
2 added a word. You said can also. It says PT  
3 notes also substantiate.

4 MS. DORAN: Okay.

5 BY MS. DORAN:

6 Q. Is that what you stated to Dr. Khanna?

7 A. Yes.

8 Q. So the PT notes that you're referring  
9 to were dated what?

10 A. I believe it's 8/28.

11 Q. So they were from his visit of 8/28 of  
12 2015?

13 A. I would have to look at it. I'm not  
14 sure of the actual date right now. I know that  
15 I believe it's 8/28.

16 Q. You believe it's 8/28. And you claim  
17 you got these notes from Richard Rascher?

18 A. Correct.

19 Q. And if I told you Mr. Rascher did not  
20 give you these notes, could you dispute that?

21 MR. BRENNEMAN: Objection to the form.

22 THE WITNESS: There's no way for me to -- I  
23 mean how can I dispute that? I'm telling you  
24 he gave me the notes.

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1 just -- I didn't move forward on this.

2 Q. By this e-mail is Dr. Khanna concerned  
3 that you may have a legal issue if you don't  
4 clear it with -- and he wants to be sure that  
5 you're going to clear it with Valerie or S &  
6 C's legal team before you proceed?

7 MR. BRENNEMAN: Objection to the form.

8 THE WITNESS: You know, I can't speak to  
9 what Valerie or S & C's legal team is going to  
10 say. Okay? What Dr. Khanna is saying, at this  
11 point, if we're not going to clear him, what is  
12 the purpose of calling up the physicians and  
13 what's -- what are they supposed to do at this  
14 point, you know. And I believe he was correct  
15 in that. If he feels he's unsafe and we have  
16 the PT notes, we have everything, and we can't  
17 clear him because he's not safe in the plant,  
18 then why are we going to go forward and start  
19 doing everything else.

20 BY MS. DORAN:

21 Q. But he is not saying that?

22 MR. BRENNEMAN: Objection to the form.

23 BY MS. DORAN:

24 Q. He is saying however, correct? He



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1 to go back and recall exactly, you know, but he  
2 was talking to Sophia. He was sitting in her  
3 chair. He went to get up and he -- it took him  
4 five times, and we asked him do you need some  
5 help, and he was like no. And that particular  
6 chair had a hard seat with, you know, side  
7 rails where you could push on it to get up.

8 Q. So you previously testified that you  
9 observed him not seeming balanced, and I  
10 believe that was on August 20th when he came --

11 A. That was the first time, yes.

12 Q. And that's when he came in to you with  
13 Marcia Burton, but he first came in maybe  
14 accidentally to health services; is that  
15 correct?

16 A. Well, he wasn't with Marcia. He was  
17 sitting in the office, and I guess he was  
18 coming in to benefits, but he came into health  
19 services by mistake. I wasn't sure who the  
20 people were, but they came down and saw him. I  
21 think they would have to identify who they  
22 were, because I didn't speak. I was standing  
23 on the side watching. And I watched him. They  
24 realized where he was supposed to go and they

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1 were going to take him there, and I started to  
2 say, Do you need a wheelchair. We can get you  
3 a wheelchair. Before I could say that, one of  
4 the people that were standing there said, Can  
5 we help you, because he was struggling to get  
6 out of the chair. And he said no. And so at  
7 that point I just kind of -- didn't ask him  
8 about the wheelchair, and he did get up out of  
9 the chair. And he walked out -- he had a  
10 couple of canes and he was very unbalanced. As  
11 he walked, he was shuffling. Everybody was  
12 kind of hovering around him. Then I watched  
13 him and the group leave health services. And  
14 then as you leave health services, you know,  
15 they went off towards benefits. And that's  
16 all -- the only contact I had that day. I  
17 never spoke with him personally.

18 Q. And then on August 31 when he came in  
19 to have his meeting with Dr. Khanna, what did  
20 you observe?

21 A. You know, he still was not balanced  
22 when he was walking. He came in -- he still  
23 had an assistive device, and I was in and out  
24 of health services. I had people in my office,

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1 so I wasn't, you know, around the whole time or  
2 observing. I'm not sure that I saw him leave.  
3 And that's all that I remember of 8/31.

4 Q. Did you observe him trying to get up  
5 out of a chair on that date?

6 A. Again, part of my recollection going  
7 back, that could have been the day he came in  
8 that he was sitting in Sophia's office for the  
9 appointment. And so all I can say is that he  
10 had difficulty on the 20th, or whatever when he  
11 came in by mistake, and then on 9/8 he was  
12 still having difficulty walking and getting out  
13 of chairs. He had to push on my desk. He was  
14 having some trouble getting up.

15 Q. So at the time you observed him in  
16 Sophia's office having a hard time getting up  
17 and you said it took him five times, you're not  
18 sure if that was on August 31st or on September  
19 8th; is that right?

20 A. The one in Sophia's office, correct.  
21 He was in my office on the 9th, though, and  
22 that he had trouble walking and getting up on  
23 that date.

24 MS. DORAN: On the 8th?

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1 THE WITNESS: Yes.

2 BY MS. SMASON:

3 Q. And so is it your testimony that there  
4 were two times you observed him having  
5 difficulty getting out of his chair, one was on  
6 August 20th and the other was September 8th  
7 when he was in your office?

8 A. Well, I saw him three times with  
9 getting out of chairs. Once was in the hallway  
10 waiting on the 20th. I can't say for sure  
11 whether the second one in Sophia's office was  
12 on the 31st or on the 8th, but I observed him  
13 in that office. Then he had trouble  
14 getting -- at my desk, that chair on the 8th.

15 Q. On August 20th you also observed him  
16 having trouble getting out of a chair; is that  
17 right?

18 A. That was the first time that I saw  
19 him, yes.

20 Q. Okay.

21 A. And walking. That was the day he came  
22 in and left with the group.

23 Q. So did you see -- did you observe him  
24 getting out of a chair three times then?

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1           A.     Three times total.

2           Q.     Once August 20th, once on -- maybe  
3     August 31st or September 8th in Sophia's office  
4     and then once in your office?

5           A.     Correct.

6           Q.     And from your observation, did he seem  
7     to have the same level of difficulty getting  
8     out of the chair from the first time you saw  
9     him do that on August 20th versus the last time  
10    you saw him on September 8th, either in your  
11    office or in Sophia's office?

12          A.     Yes. I didn't see a big change.

13          Q.     And what about in terms of your  
14    observations of him walking over that same  
15    period of time from August 20th until September  
16    8th?

17          A.     He still had balance issues. He was  
18    still shuffling. He was walking very slow.  
19    There were times he would lose his balance and  
20    catch himself. I believe that's all I can say  
21    for that.

22          Q.     Did you see any difference in his  
23    ability to walk from the first time you saw him  
24    until the last time?

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1           A.    I did not see a difference.  I believe  
2   he was using -- I was told -- well, I shouldn't  
3   say I was told.  I believe he switched from two  
4   canes to one cane during that time period.  But  
5   that would be -- other than that, he had  
6   difficulty walking, still had a lot of balance  
7   and functional issues.

8           Q.    I was going to ask you about the  
9   assistive devices.  You said on August 20th you  
10  saw a couple of canes, correct?

11          A.    Uh-huh.

12          Q.    And then on August 31st you said he  
13  had an assistive device.  Do you know if that  
14  was one or two canes or something else?

15          A.    I believe he had one cane.  My  
16  recollection is a little foggy in that respect.

17          Q.    And then do you believe from what you  
18  can recall that on September 8th he had one  
19  cane also?

20          A.    Correct.

21          Q.    And you never asked Mr. Rascher if he  
22  were to come back to work if he might be able  
23  to get some help on his own getting in and out  
24  of the building, if that was your concern,

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Re: Depositions of **Kathleen Clawson Vol. I and Vol. II**  
03/13/2019  
EEOC v S&C

I wish to make changes for the following reasons:

Page Line

2 21 Change: Address: 1003 to 1033

Reason: Transcription ERROR

28 6 Change: Midwest in the Northeast to Midwest and the Northeast

Reason: Transcription ERROR

86 21 Change: MORE to POOR

Reason: Transcription Error

93 22 Change: Take their — to take their pain

Reason: Transcription ERROR omission

— — Change: \_\_\_\_\_

Reason: \_\_\_\_\_

— — Change: \_\_\_\_\_

Reason: \_\_\_\_\_

— — Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Signed: Kathleen A. [Signature]

12842

Date: 4/22/19 Sheet 1 of 1

# Exhibit J



**ADVOCATE MEDICAL GROUP - ONCOLOGY**

*Previously*

**ONCOLOGY SPECIALISTS, SC**

**Patient:** Richard Rascher

**DOB:** Jun 01, 1941

**Date:** Jul 13, 2015

**Location:** Park Ridge

**Attending Physician:** Jacob Bitran, M.D.

**Note Type:** Progress Note

**Complaint/Presenting Problem:**

The patient is seen today for continuation of management regarding his rectal cancer. He is receiving physical therapy at home and he is status post right hip arthroplasty. He is somewhat frustrated at the place of his rehabilitation. To be following up with his orthopedist on Friday. Prior to the time it today's visit PET scan was performed to restaged his rectal cancer.

**HPI:**

Rectal Ca T3,N0,M0

**PMH:**

Mr. Rascher's medical history consists of Arthritis (knees).

**Current Medications:**

Aleve, Colchicine, Gabapentin, Hydrocodone-APAP, Potassium

Medications were reviewed and updated.

**Allergies:**

No Known Allergies.

Allergies were reviewed. No new allergies reported.

**Past Surgical History:**

Mr. Rascher's surgical/procedural history consists of appendectomy, Right hip arthroplasty in 2015, and Colonoscopy with biopsy in 2014.

**Family History:**

There is no family history of cancer. His sister had a stroke at age 59. He has two adult aged children who are in good physical health.

**Personal/Social History:**

Mr. Rascher is widowed and he is an electrical engineer. Mr. Rascher has never smoked. He drinks occasionally. Mr. Rascher reports no contact with hazardous material.

Mr. Rascher reports the following support systems: his family. he lives alone. His diet consists of regular meals. He indicates his activity level as: light exercise and walking the dog.

**Review of Systems:**

Constitutional	Abnormal - Continued weight loss, poor appetite
ENMT	Normal - No problems with hearing, no sore throat, no sinus drainage.
Hematologic/Lymphatic	Normal - No easy bruising or bleeding. The patient denies any tender or palpable lymph nodes.
Breasts	Normal - No abnormal masses of breast, no nipple discharge or pain.
Respiratory	Normal - No dyspnea on exertion, chest pain, cough or hemoptysis.
Cardiovascular	Normal - No anginal chest pain, palpitations or orthopnea.
Gastrointestinal	Normal - No nausea, vomiting, diarrhea, GI bleeding, or constipation. No change in bowel habits, no heartburn or early satiety.
Genitourinary (M)	Normal - No hematuria, dysuria, increased frequency, urgency, hesitancy or incontinence.
Integumentary	Normal - No chronic rashes, inflammation, ulcerations or skin changes.

Name: Rascher, Richard  
Printed: Jul 13, 2015  
Page: 2

Neurologic	Normal - No headache, blurred vision, and no areas of focal weakness or numbness. Normal gait. No sensory problems.
Psychiatric	Normal - No insomnia, depression, mania or mood swings. No psychotropic drugs.

**Physical Examination:**

Performed on Jul 13, 2015 15:49

Height - 190.00 cms

Weight - 79.0 kg (HIGH)

BSA - 2.07 sq.m

BMI - 21.8800

Temperature - 98.4 F

Pulse - 78 /min

Respiration - 16 /min

BP - 132/65 mm(hg)

Pain - 4 right hip and both breast

1 - No physically strenuous activity, but ambulatory and able to carry out light or sedentary work (e.g. office work, light house work). (ECOG)

Constitutional	Alert, cooperative, oriented. Mood and affect appropriate. Appears close to chronological age. Thin
Head	Normocephalic; no scars.
ENMT	No oral exudates, ulcers, masses, thrush or mucositis. Oropharynx clear. Tongue normal.
Hematologic/Lymphatic	No petechiae or purpura. No tender or palpable lymph nodes in the cervical, supraclavicular, axillary or inguinal area.
Respiratory	Lungs are clear to auscultation without rhonchi or wheezing.
Cardiovascular	Regular rate and rhythm of heart without murmurs, gallops or rubs.
Abdomen	Non-tender, non-distended, no masses, ascites or hepatosplenomegaly. Good bowel sounds. No guarding or rebound tenderness. No pulsatile masses. Healed abdominal scars.
Extremities	No visible deformities, no cyanosis, clubbing or edema. Pulses 4+ and equal bilaterally.
Integumentary	No rashes, scars, or lesions suggestive of malignancy.
Neurologic	No sensory or motor deficits, normal cerebellar function, normal gait, cranial nerves intact.
Psychiatric	Alert and oriented times three. Coherent speech. Verbalizes understanding of our discussions today.

**Pain Assessment Score:**

**Current Pain Management:**

**Counseling/Teaching (Time of counseling/Time of visit):**

**Impression:**

Rectal Cancer Stage IIB S/P neoadjuvant concurrent radiation therapy and Xeloda.

Reanastomosis

status post right hip arthroplasty

I spent 5 minutes of the 15 minute of is a reviewing the patient's PET scan and I indicated that there is no signs of any recurrent malignancy.

**Plan(Problem-oriented):**

follow up in 6 months.

Name: Rascher, Richard  
Printed: Jul 13, 2015  
Page: 3

**Return Appointment:**

**Electronically signed by:**

Jacob Bitran, MD

**cc:**

Gabriel Kibrit, M.D.

John J Park, M.D.

*ADVOCATE MEDICAL GROUP - ONCOLOGY*

*Previously*

*ONCOLOGY SPECIALISTS, SC*

**Patient:** Richard Rascher

**DOB:** Jun 01, 1941

**Date:** Mar 20, 2018

**Location:** Niles

**Attending Physician:** Jacob Bitran, M.D.

**Note Type:** Progress Note

**Complaint/Presenting Problem:**

The patient is seen today for continuation of management regarding his rectal cancer.

**HPI:**

Rectal Ca T3,N0,M0

September 26 8, 2016: The patient seen in follow up today for rectal cancer. Since the time of his last visit he developed significant lymphedema on the left and a trace lymphedema on the right. He is managing this with compression hose as well as sequential compression machine. He is somewhat depressed over the loss of his employment and is trying to deal now with the lymphedema.

January 18, 2017: Patient is not feeling well. He has noticed blood with wiping and thinks is related to irritation from all of the loose bowel movements he has had. Also has noticed a clear discharge from a "bubble." He has urinary incontinence, which is new for him. Also currently with a gout attack of his right wrist, on colchicine and indomethacin.

July 19, 2017: Seen in follow-up for rectal cancer. He is now approximately 3 years from the time of diagnosis. His complaints today are related to the fact that he is is debilitated because of osteoarthritis now involving his left hip and he indicates that he requires a left hip arthroplasty. The arthritis is making him less mobile and he is not doing the things that he used to do in the past which causes melancholy.

November 17, 2017: The patient is seen today on an urgent basis because of an acute left peroneal DVT. He underwent left hip arthroplasty on November 3. He was discharged to a rehab facility on prophylactic Xarelto, 10 mg daily. He saw his orthopedic surgeon, Dr. Matt Jimenez today where he was found to have a significantly swollen left leg. Stat Doppler studies documented an acute left peroneal DVT. He was then sent here for management. He denies any breathlessness.

November 21, 2017: Seen today in follow up for left leg DVT. He is currently on Xarelto with a loading dose of 15 mg twice a day and tolerating it well. He is of the opinion that his leg is slightly better.

November 29, 2017 seen today because of continued swelling of the left leg. He is on the Xarelto starter pack and otherwise tolerating it well. He is noted a significant improvement in the swelling of his right leg but is discouraged about the continued swelling of the left which is prompted today's visit.

December 7, 2017: He is seen today in follow-up for DVT and because of swelling of the left leg. He is currently on Xarelto 15 mg twice daily but in 2 days will start on the maintenance dose of 20 mg daily. Additionally he is on diuretics. He reports a significant improvement in the swelling of both legs.

December 27, 2017: Seen today in follow-up for DVT. Since the time of his last visit he was prescribed triamterene which has done absolutely nothing. He continues to complain of swelling in both legs and is currently on a maintenance dose of Xarelto, 20 mg daily. Additional complaints are related to urinary frequency. He is having 2 soft bowel movements per day and denies any diarrhea or hematochezia. He denies any pain.

January 29, 2018: Seen once again in follow-up for DVT. He remains on Xarelto 20 mg daily. He is continuing his diuretics. He still has significant edema involving his left leg. He is not participating in physical therapy and denies any pain.

March 1, 2018: Seen in follow-up for DVT, remains on Xarelto, and his only complaints are related to the fact that he was recently had an episode of gout and was treated with a Medrol Dosepak. The gout has resolved and he remains ambulatory.

3/13/2018: Seen in follow-up because of increasing edema following steroids; frustrated.

March 20, 2018: Seen in follow-up today for bilateral pedal edema. Currently taking 2 mg of Bumex in conjunction with 50 mg of Aldactone and there has been no resolution of the edema in his right leg and improvement in the left. Other complaints are related to urinary frequency and dribbling. Frustrated at the number of times he feels he has to urinate particularly with the augmented dose of diuretics. In addition complains of arthritis in his knee, he had a cortisone injection without any improvement.

**PMH:**

Mr. Rascher's medical history consists of Arthritis (knees).

Name: Rascher, Richard  
Printed: Mar 20, 2018  
Page: 2

**Current Medications:**

Bumetanide, Hydrocodone-Acetaminophen, Rivaroxaban, Rivaroxaban, Spironolactone, Allopurinol, AmLODIPine Besylate, Aspirin, Calcium, Lisinopril  
Medications were reviewed and updated.

**Allergies:**

No Known Allergies.  
Allergies were reviewed. No new allergies reported.

**Past Surgical History:**

Mr. Rascher's surgical/procedural history consists of appendectomy, Kyphoplasty in 2016, Kyphoplasty in 2015, Right hip arthroplasty in 2015, and Colonoscopy with biopsy in 2014.

**Family History:**

There is no family history of cancer. His sister had a stroke at age 59. He has two adult aged children who are in good physical health.

**Personal/Social History:**

Mr. Rascher is widowed and he is an electrical engineer. Mr. Rascher has never smoked. He drinks occasionally. Mr. Rascher reports no contact with hazardous material.  
Mr. Rascher reports the following support systems: his family. he lives alone. His diet consists of regular meals. He indicates his activity level as: light exercise and walking the dog.

**Review of Systems:**

Constitutional	Normal - No fevers, chills, night sweats, excessive fatigue or weight loss.
ENMT	Normal - No problems with hearing, no sore throat, no sinus drainage.
Hematologic/Lymphatic	Normal - No easy bruising or bleeding. The patient denies any tender or palpable lymph nodes.
Breasts	Normal - No abnormal masses of breast, no nipple discharge or pain.
Respiratory	Normal - No dyspnea on exertion, chest pain, cough or hemoptysis.
Cardiovascular	Normal - No anginal chest pain, palpitations or orthopnea.
Gastrointestinal	Normal - No nausea, vomiting, diarrhea, GI bleeding, or constipation. No change in bowel habits, no heartburn or early satiety.
Genitourinary (M)	Abnormal - No hematuria, dysuria, urgency, hesitancy or incontinence. Frequency with episodes of dribbling.
Integumentary	Normal - No chronic rashes, inflammation, ulcerations or skin changes.
Neurologic	Normal - No headache, blurred vision, and no areas of focal weakness or numbness.
	Normal gait. No sensory problems.
Psychiatric	Normal - No insomnia, depression, mania or mood swings. No psychotropic drugs.

**Physical Examination:**

Performed on Mar 20, 2018 15:30  
Height - 190.00 cms  
Weight - kg not done, knee pain  
Temperature - 95 F (LOW)  
Pulse - 80 /min  
Respiration - 12 /min  
BP - 127/67 mm(hg)  
Pain - 7 knee, leg pain  
1 - No physically strenuous activity, but ambulatory and able to carry out light or sedentary work (e.g. office work, light house work). (ECOG)

Constitutional                      Alert, cooperative, oriented. Mood and affect appropriate. Appears close to

Bitran000118

Name: Rascher, Richard  
Printed: Mar 20, 2018  
Page: 3

Head	chronological age. Thin
ENMT	Normocephalic; no scars. No oral exudates, ulcers, masses, thrush or mucositis. Oropharynx clear. Tongue normal.
Hematologic/Lymphatic	No petechiae or purpura. No tender or palpable lymph nodes in the cervical, supraclavicular, axillary or inguinal area.
Respiratory	Lungs are clear to auscultation without rhonchi or wheezing.
Cardiovascular	Regular rate and rhythm of heart without murmurs, gallops or rubs.
Abdomen	Non-tender, non-distended, no masses, ascites or hepatosplenomegaly. Good bowel sounds. No guarding or rebound tenderness. No pulsatile masses. Healed abdominal scars.
Extremities	The right leg is no longer edematous. There is 2-3+ pedal and pretibial edema on the left
Integumentary	No rashes, scars, or lesions suggestive of malignancy.
Neurologic	No sensory or motor deficits, normal cerebellar function, normal gait, cranial nerves intact.
Psychiatric	Alert and oriented times three. Coherent speech. Verbalizes understanding of our discussions today.

**Laboratory:**

**Radiology/Pathology Reports:**

**Pain Assessment Score: 4/10**

**Current Pain Management: cortisone injection**

**Effective: yes or nox**

**Counseling/Teaching (Time of counseling/Time of visit):**

**Impression:**

Rectal Cancer Stage IIB S/P neoadjuvant concurrent radiation therapy and Xeloda.

Reanastomosis

status post right hip arthroplasty

Rectal bleeding that is related to irritation from loose stool. Recommended to increase stool bulking.

Urinary incontinence, prostate gland size normal on exam. Recommend urology referral.

I advised that he decrease the Bumex to 1 mg and decrease the Aldactone to 25 mg. I asked to see him again in 3 weeks. I wrote a prescription for Norco to deal with his knee pain.

**Plan(Problem-oriented):**

Bumex 1 mg daily in conjunction with Aldactone 25 mg daily. Continue Xarelto 20 mg daily

Norco 5 mg was prescribed for his knee pain.

Return in 3 week

**Return Appointment:**

**Electronically signed by:**

Jacob Bitran, MD

**cc:**

Gabriel Kibrit, M.D. John J Park, M.D.

Name: Rascher, Richard  
Printed: Mar 20, 2018  
Page: 4

Bitran000120



*ADVOCATE MEDICAL GROUP - ONCOLOGY*

*Previously*

*ONCOLOGY SPECIALISTS, SC*

CT CHEST, ABDOMEN AN

Patient Name: RICHARD RASCHER

Accession #

CT-15-0034731

CT Chest, Abdomen, Pelvis

INDICATION:

INDICATION: Rectal carcinoma. Recurrence. Dehydration, weakness.

TECHNIQUE :

Oral and IV contrast utilized. 91 cc Omnipaque 300 utilized for the IV infusion.

COMPARISON:

No chest comparisons. Abdomen and pelvic CT compared to January 5, 2015..

CHEST:

MEDIASTINUM:

Thyroid normal.

Tracheobronchomegaly compatible with obstructive airway disease.

No mediastinal masses. No adenopathy in the mediastinum or in the hila. No axillary adenopathy.

---

LUNGS:

Marked hyper aeration of the lungs compatible with COPD.

Previously there were bilateral pleural effusions. Currently one on the right stable. On the left smaller compared to previous exam.

Triangular focus of infiltrate right lower lobe posteriorly. High density material centrally could represent hemorrhagic focus or enhancement of the nodule.

Lungs otherwise clear.

IMPRESSION:

Bilateral pleural effusions.

Infiltrate right lower lobe posteriorly with high density areas anteriorly. This could represent area of pneumonia. The high density material has differential considerations above. Location would raise the possibility of aspiration pneumonia.

COPD.

ABDOMEN and PELVIS

ABDOMEN:



Name: Rascher, Richard  
Printed: Feb 16, 2015  
Page: 2

A few tiny low-density lesions are present in the liver. These do not become isodense with liver on delayed images and probably represent small cysts. These were not present on the previous study but previous examination performed without IV contrast.

Gallbladder contracted. No obvious abnormalities. Pancreas, spleen and both kidneys normal. Normal excretion of contrast from the kidneys.

No ascites or aneurysm.

PELVIS:

Accession #

CT-15-0034731

In the pelvis fluid collection around the rectum. Suture line low on the right with some surrounding soft tissue. I cannot ascertain whether this represents an recurrence or postsurgical.

SKELETAL STRUCTURES:

Comminuted fracture right acetabulum with major fragment rotated medially. There is protrusion of acetabula on involving the femoral head.

Fracture right inferior pubic ramus

On the left prominent degenerative arthritic change.

IMPRESSION:

Comminuted right acetabular fracture.

Degenerative arthritic change left hip.

Additional incidental findings above.

Patient's nurse Ashley notified of findings regarding the right hip by phone.

\*\*\*\* FINAL \*\*\*\*

Transcribed By: TP  
02/16/15 7:31 pm

Dictated By: MCFADDEN-MD, JOHN

Electronically Reviewed and Approved By: MCFADDEN-MD, JOHN 02/16/15 7:48 pm

# Exhibit K

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
Plaintiff, )  
and )  
RICHARD RASCHER, ) Civil Action No.  
Plaintiff- ) 1:17-cv-06753  
Intervenor, ) Judge Robert W.  
vs. ) Gettleman  
S&C ELECTRIC COMPANY, ) Magistrate Judge  
Defendant. ) Maria Valdez

The confidential deposition of JACOB  
BITRAN, M.D., taken in the above-entitled cause,  
before Angela M. Ingham, a Notary Public within and  
for the County of Cook and State of Illinois, and a  
Certified Shorthand Reporter of said state, taken  
pursuant to the Federal Rules of Civil Procedure  
for the United States District Court, at  
1700 Luther Lane, Suite 2200, Park Ridge, Illinois,  
on the 22nd day of February, 2019, at the hour of  
1:02 p.m.

1 APPEARANCES:

2 Present telephonically:

3 MR. ETHAN M.M. COHEN  
4 EEOC  
5 500 West Madison Street, Suite 2000  
6 Chicago, Illinois 60661  
7 312.353.2713  
8 ethan.cohen@eeoc.gov

9 On behalf of the U.S. Equal  
10 Employment Opportunity  
11 Commission;

12 Present telephonically:

13 MS. JOETTE S. DORAN  
14 JOETTE S. DORAN & ASSOCIATES, P.C.  
15 2300 North Barrington Road  
16 Suite 400  
17 Hoffman Estates, Illinois 60169  
18 847.490.5309  
19 joette@joettedoran.com

20 On behalf of the Plaintiff  
21 Richard Rascher;

22 Present at 1700 Lutheran Lane, Suite 2200,  
23 Park Ridge, Illinois:

24 MR. L. BRANDON LISS  
FOX SWIBEL LEVIN & CARROLL LLP  
200 West Madison Street, Suite 3000  
Chicago, Illinois 60606  
312.224.1225  
bliss@foxswibel.com

On behalf of the Defendant.

21 ALSO PRESENT:

22 Present at 1700 Lutheran Lane, Suite 2200,  
23 Park Ridge, Illinois:

24 DR. JACOB BITRAN, M.D.

1 (Witness duly sworn.)

2 JACOB BITRAN, M.D.,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. LISS:

7 Q. Good morning. My name is Brandon Liss. I

8 represent S&C Electric Company, who is the

9 defendant in this case, and I'll be taking your

10 deposition this afternoon.

11 Can you please state your name and address

12 for the record.

13 A. It's Jacob Bitran, B-i-t-r-a-n,

14 1700 Luther Lane, Park Ridge, Illinois, 60068.

15 Q. And, Dr. Bitran, have you ever had your

16 deposition taken before?

17 A. Yes.

18 Q. When was that?

19 A. Probably sometime last fall.

20 Q. And what type of case was that deposition

21 for?

22 A. Okay. So generally speaking when I do

23 depositions, they're in the context of medical

24 malpractice.

1 callus formation. Can you explain the significance  
2 of that?

3 A. He had a broken rib that's in the process  
4 of healing.

5 Q. And regarding the thoracic and lumbar  
6 spine degenerative change, is that something that  
7 you recognized at a later point that's progressing  
8 to be worse?

9 A. Well, I mean, degenerative changes, you  
10 know, tend to get worse over time. I don't know  
11 that I specifically commented on it later; but, you  
12 know, that's the nature of arthritis.

13 Q. Dr. Bitran, you're now being handed what's  
14 been marked as Defendant's Exhibit No. 164. This  
15 is Bitran 172 to 173.

16 (Whereupon, Defendant's  
17 Deposition Exhibit No. 164 was  
18 marked for identification.)

19 BY MR. LISS:

20 Q. Is this the February 16, 2015, report from  
21 Mr. Rascher's CT scan of the chest, abdomen, and  
22 pelvis that you ordered?

23 A. Yes.

24 Q. Again, it's signed by another doctor, but

1 was it accessible to you?

2 A. Yes.

3 Q. And something that you reviewed?

4 A. Yes.

5 Q. And part of your records?

6 A. Yes.

7 Q. The indication states rectal carcinoma,  
8 recurrence, dehydration, and weakness. What's the  
9 significance of that?

10 A. Those were -- those were the reasons for  
11 doing the CT scan.

12 Q. To check for those things?

13 A. No. That was the indication. There were  
14 concerns about whether we might be dealing with  
15 recurrent disease that was contributing to his  
16 overall weakness, so that was the indication for  
17 doing the CT.

18 Q. So the statement of recurrence there  
19 doesn't mean that it did recur, is that what you're  
20 saying? You're checking to see if that's the cause  
21 of some of these other notations?

22 A. We're checking to see if that's the cause  
23 of his ailments, not that we've documented  
24 recurrent disease.

1 fall.

2 Q. So you said he was seeing a specialist, a  
3 rheumatologist, for the osteonecrosis and the  
4 various arthritic conditions?

5 A. He was seeing a rheumatologist because of  
6 the arthritic conditions.

7 Q. And the arthritic conditions combined with  
8 the fractures, how does that affect one's ability  
9 to be mobile?

10 A. Well, if you've got osteonecrosis of the  
11 hip, you're not going to be mobile.

12 Q. Does that include walking?

13 A. It includes walking. The person is going  
14 to be walking with a limp, great deal pain. There  
15 was a baseball/football player, Bo Jackson,  
16 developed osteonecrosis of the hip. I forgot what  
17 hip it was, and he never played sports again.

18 Q. Is it something that would cause  
19 Mr. Rascher to need to stay away from machinery?

20 A. Well, I think --

21 MR. COHEN: Objection, vague and leading.

22 THE WITNESS: I don't know how someone is going  
23 to function with osteonecrosis including doing  
24 sedentary work.



1 of recurrent disease.

2 Q. Cancer?

3 A. Cancer.

4 Q. I see. Dr. Bitran, you're now being

5 handed what's been marked as Defendant's Deposition

6 Exhibit No. 168. This is Bitran 68 through 70.

7 (Whereupon, Defendant's

8 Deposition Exhibit No. 168 was

9 marked for identification.)

10 BY MR. LISS:

11 Q. Is this your progress note from

12 Mr. Rascher's July 13, 2015, appointment?

13 A. Yes.

14 Q. And what was the reason for this visit?

15 A. To review the PET scan.

16 Q. That was the routine PET scan?

17 A. Yes.

18 Q. And it's more than seven months since the

19 last appointment. Is that significant?

20 A. Well, you know, he had the arthroplasty.

21 He had rehab. You know, he had lots of things that

22 were going on which took priority over surveillance

23 of his rectal cancer.

24 Q. You're referring to the orthopedic

1 conditions?

2 A. Correct.

3 Q. There's a note here that says Mr. Rascher  
4 was receiving physical therapy post-right hip  
5 arthroplasty. At this point when you saw him what  
6 did you observe regarding the effects of the  
7 surgery?

8 A. Well, I mean, you know, he was ambulating.  
9 I didn't note whether he was ambulating with a  
10 cane. I don't believe he was ambulating with a  
11 walker at this point but he was also very  
12 frustrated because I thought -- or he thought that  
13 he would be a lot further along in terms of his  
14 mobility.

15 Q. So where it says "frustrated at place,"  
16 does that mean pace?

17 A. Pace, yes.

18 Q. So was it your understanding that he was  
19 significantly limited at that point?

20 A. Well, he was limited because he wasn't --  
21 I think his concept was I'm going to be as good as  
22 I was prior to the time of this whole episode with  
23 the rectal cancer and kind of coming and going as I  
24 please and I think that it was -- he was frustrated

1 that he wasn't at that level.

2 Q. And to clarify, is that as a result of the  
3 orthopedic conditions?

4 A. Yes.

5 Q. Now you mention that you expected in  
6 February you thought that Mr. Rascher would likely  
7 have been able to return to work had it just been  
8 the treatment of his cancer.

9 A. Yes.

10 Q. Was it your understanding at this point  
11 that that was the case had his only treatment been  
12 regarding the maintenance and oversight of the  
13 cancer that he would have been okay to go back to  
14 work?

15 A. I believe so.

16 Q. You also noted that he was following up  
17 with his orthopedist. Was it your understanding  
18 that he at that point had ongoing appointments with  
19 orthopedic specialists?

20 A. Yes.

21 Q. There's also a note in the medication  
22 section that Mr. Rascher is taking Aleve and  
23 hydrocodone. Can you explain what hydrocodone is?

24 A. Hydrocodone is a narcotic. It's used in

1 the treatment of pain, and he was taking it because  
2 of the surgery that he had performed by Dr. Jimenez  
3 in terms of the right hip arthroplasty.

4 Q. From July he was continuing to still take  
5 the hydrocodone and is hydrocodone used for more  
6 extreme pain than other -- than Aleve?

7 A. Yes.

8 Q. So here you make a note in the physical  
9 examination section regarding pain and note that it  
10 is not related to the rectal cancer. You say four  
11 in the right hip and both breasts. Can you explain  
12 the significance of that?

13 A. Okay. So the pain was a four out of ten  
14 in the right hip, and he was complaining of some  
15 chest pain.

16 Q. And as of this time you still have the  
17 same notation in terms of the restrictions on his  
18 activities, correct?

19 A. Correct.

20 Q. Which has been consistent throughout?

21 A. Correct.

22 Q. Dr. Bitran, you're now being handed what's  
23 been marked previously in another deposition as  
24 Defendant's Deposition Exhibit No. 65.

1 A. Correct.

2 Q. And you said you were aware of the other  
3 medical problems for which he was being treated.  
4 Did you consult the orthopedic doctors when you  
5 issued this note?

6 A. No.

7 Q. So is there any reason that your opinion  
8 in this letter should be construed to override that  
9 of one of his treating specialists?

10 A. No.

11 Q. So when you say that Mr. Rascher could  
12 potentially do sedentary work, would you  
13 characterize your return to work letter as one with  
14 restrictions?

15 A. Yes, sedentary work.

16 Q. Dr. Bitran, you're now being handed what's  
17 been marked as Defendant's Deposition Exhibit  
18 No. 169. This is Bitran 71 through 73.

19 (Whereupon, Defendant's  
20 Deposition Exhibit No. 169 was  
21 marked for identification.)

22 BY MR. LISS:

23 Q. Is this your progress note for  
24 Mr. Rascher's January 18, 2016, appointment?

1 A. Yes.

2 Q. This is the first appointment that you had  
3 after you had issued that return to work letter  
4 that we just described?

5 A. Yes.

6 Q. And what was the reason for this  
7 appointment?

8 A. Just routine followup from the standpoint  
9 of his rectal cancer.

10 Q. And at this point in time what generally  
11 are you seeing Mr. Rascher for and then continuing  
12 on to present?

13 A. Again, it's just routine followup for the  
14 rectal cancer. I mean, more recently he's  
15 developed deep vein thromboses and was on  
16 anticoagulants, and he's had issues with edema.

17 Q. And what's the reason for him seeing an  
18 oncologist for those issues?

19 A. Well, the -- okay. So we do hematology  
20 and oncology; and many times when it comes to the  
21 anticoagulants, physicians, orthopedists, primary  
22 care physicians refer a patient to us for  
23 anticoagulant management.

24 Q. And for those conditions, what kinds of

1 effects do they have on one's mobility including  
2 their ability to walk around, their ability to  
3 stand for a period of time, their ability to sit  
4 for a period of time?

5 A. Well, with the deep vein thrombosis, it's  
6 severely limited because he had, you know,  
7 significant swelling in both lower extremities. He  
8 was on anticoagulants. It was exceedingly  
9 difficult for him to walk. He was using a cane to  
10 walk, and the deep vein thrombosis significantly  
11 impaired his overall mobility.

12 Q. And at what time period are you talking  
13 about with respect to that?

14 A. This is -- the deep vein thrombosis  
15 occurred last year, and he was taken off  
16 anticoagulants in the fall of last year.

17 Q. 2018?

18 A. 2018.

19 Q. In your note here there's a description of  
20 two kyphoplasties. What is that?

21 A. So he had fractured bones in his back.  
22 The bone collapsed upon itself, so he needed the  
23 bone to be blown up which is what the kyphoplasty  
24 procedure is for.

1 Q. And what kind of limitations would that  
2 condition or two of those conditions have on  
3 Mr. Rascher?

4 A. Well, they would probably prevent him from  
5 even doing sedentary work.

6 Q. And one of those kyphoplasties was in 2015  
7 and one in 2016, is that correct?

8 A. That's correct.

9 Q. Do you recall when in 2015?

10 A. I would have to go back and look at my  
11 records.

12 Q. And I take it if it's marked in a  
13 January 18, 2016, document that you recorded and  
14 this kyphoplasty took place in 2016 prior to that  
15 appointment, it must have been sometime between the  
16 first of the year and that appointment?

17 A. Correct.

18 Q. Did you make any specific observations as  
19 to how you viewed Mr. Rascher's limitations or  
20 restrictions at that appointment?

21 A. No, other than the fact that he was using  
22 a cane but he was preparing meals and doing his own  
23 housework.

24 Q. And at this point he's still taking



1 hydrocodone?

2 A. Yes.

3 Q. Was that consistent?

4 A. Yes.

5 Q. In your impression notes you indicate that

6 there's a need for every six months following up

7 with labs. Is that with respect to routine

8 maintenance of cancer treatment?

9 A. Yes.

10 Q. Dr. Bitran, you are now being handed

11 what's been marked as Defendant's Deposition

12 Exhibit 170. This is Bitran 167 and 168.

13 (Whereupon, Defendant's

14 Deposition Exhibit No. 170 was

15 marked for identification.)

16 BY MR. LISS:

17 Q. Dr. Bitran, is this the July 13, 2016,

18 report for the PET/CT whole body study that you

19 referred Mr. Rascher for?

20 A. Yes.

21 Q. It's again signed by another doctor, but

22 is it still something you reviewed and part of your

23 records?

24 A. Yes.

1 MR. LISS: We will, and we'll designate this as  
2 confidential, yes?

3 MS. DORAN: Yes, thank you. Yes, on behalf of  
4 Mr. Rascher, I would like to designate the  
5 deposition as confidential and subject to the  
6 protective order.

7 MS. REPORTER: Would you like to order a copy?

8 MS. DORAN: Not at this time.

9 MR. COHEN: EEOC will order.

10 FURTHER DEPONENT SAITH NOT  
11  
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23  
24

# Exhibit K

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
Plaintiff, )  
and )  
RICHARD RASCHER, ) Civil Action No.  
Plaintiff- ) 1:17-cv-06753  
Intervenor, ) Judge Robert W.  
vs. ) Gettleman  
S&C ELECTRIC COMPANY, ) Magistrate Judge  
Defendant. ) Maria Valdez

The confidential deposition of JACOB  
BITRAN, M.D., taken in the above-entitled cause,  
before Angela M. Ingham, a Notary Public within and  
for the County of Cook and State of Illinois, and a  
Certified Shorthand Reporter of said state, taken  
pursuant to the Federal Rules of Civil Procedure  
for the United States District Court, at  
1700 Luther Lane, Suite 2200, Park Ridge, Illinois,  
on the 22nd day of February, 2019, at the hour of  
1:02 p.m.

1 APPEARANCES:

2 Present telephonically:

3 MR. ETHAN M.M. COHEN  
4 EEOC  
5 500 West Madison Street, Suite 2000  
6 Chicago, Illinois 60661  
7 312.353.2713  
8 ethan.cohen@eeoc.gov

9 On behalf of the U.S. Equal  
10 Employment Opportunity  
11 Commission;

12 Present telephonically:

13 MS. JOETTE S. DORAN  
14 JOETTE S. DORAN & ASSOCIATES, P.C.  
15 2300 North Barrington Road  
16 Suite 400  
17 Hoffman Estates, Illinois 60169  
18 847.490.5309  
19 joette@joettedoran.com

20 On behalf of the Plaintiff  
21 Richard Rascher;

22 Present at 1700 Lutheran Lane, Suite 2200,  
23 Park Ridge, Illinois:

24 MR. L. BRANDON LISS  
FOX SWIBEL LEVIN & CARROLL LLP  
200 West Madison Street, Suite 3000  
Chicago, Illinois 60606  
312.224.1225  
bliss@foxswibel.com

On behalf of the Defendant.

21 ALSO PRESENT:

22 Present at 1700 Lutheran Lane, Suite 2200,  
23 Park Ridge, Illinois:

24 DR. JACOB BITRAN, M.D.

1 (Witness duly sworn.)

2 JACOB BITRAN, M.D.,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. LISS:

7 Q. Good morning. My name is Brandon Liss. I

8 represent S&C Electric Company, who is the

9 defendant in this case, and I'll be taking your

10 deposition this afternoon.

11 Can you please state your name and address

12 for the record.

13 A. It's Jacob Bitran, B-i-t-r-a-n,

14 1700 Luther Lane, Park Ridge, Illinois, 60068.

15 Q. And, Dr. Bitran, have you ever had your

16 deposition taken before?

17 A. Yes.

18 Q. When was that?

19 A. Probably sometime last fall.

20 Q. And what type of case was that deposition

21 for?

22 A. Okay. So generally speaking when I do

23 depositions, they're in the context of medical

24 malpractice.

1 callus formation. Can you explain the significance  
2 of that?

3 A. He had a broken rib that's in the process  
4 of healing.

5 Q. And regarding the thoracic and lumbar  
6 spine degenerative change, is that something that  
7 you recognized at a later point that's progressing  
8 to be worse?

9 A. Well, I mean, degenerative changes, you  
10 know, tend to get worse over time. I don't know  
11 that I specifically commented on it later; but, you  
12 know, that's the nature of arthritis.

13 Q. Dr. Bitran, you're now being handed what's  
14 been marked as Defendant's Exhibit No. 164. This  
15 is Bitran 172 to 173.

16 (Whereupon, Defendant's  
17 Deposition Exhibit No. 164 was  
18 marked for identification.)

19 BY MR. LISS:

20 Q. Is this the February 16, 2015, report from  
21 Mr. Rascher's CT scan of the chest, abdomen, and  
22 pelvis that you ordered?

23 A. Yes.

24 Q. Again, it's signed by another doctor, but

1 was it accessible to you?

2 A. Yes.

3 Q. And something that you reviewed?

4 A. Yes.

5 Q. And part of your records?

6 A. Yes.

7 Q. The indication states rectal carcinoma,  
8 recurrence, dehydration, and weakness. What's the  
9 significance of that?

10 A. Those were -- those were the reasons for  
11 doing the CT scan.

12 Q. To check for those things?

13 A. No. That was the indication. There were  
14 concerns about whether we might be dealing with  
15 recurrent disease that was contributing to his  
16 overall weakness, so that was the indication for  
17 doing the CT.

18 Q. So the statement of recurrence there  
19 doesn't mean that it did recur, is that what you're  
20 saying? You're checking to see if that's the cause  
21 of some of these other notations?

22 A. We're checking to see if that's the cause  
23 of his ailments, not that we've documented  
24 recurrent disease.



1 fall.

2 Q. So you said he was seeing a specialist, a  
3 rheumatologist, for the osteonecrosis and the  
4 various arthritic conditions?

5 A. He was seeing a rheumatologist because of  
6 the arthritic conditions.

7 Q. And the arthritic conditions combined with  
8 the fractures, how does that affect one's ability  
9 to be mobile?

10 A. Well, if you've got osteonecrosis of the  
11 hip, you're not going to be mobile.

12 Q. Does that include walking?

13 A. It includes walking. The person is going  
14 to be walking with a limp, great deal pain. There  
15 was a baseball/football player, Bo Jackson,  
16 developed osteonecrosis of the hip. I forgot what  
17 hip it was, and he never played sports again.

18 Q. Is it something that would cause  
19 Mr. Rascher to need to stay away from machinery?

20 A. Well, I think --

21 MR. COHEN: Objection, vague and leading.

22 THE WITNESS: I don't know how someone is going  
23 to function with osteonecrosis including doing  
24 sedentary work.

1 of recurrent disease.

2 Q. Cancer?

3 A. Cancer.

4 Q. I see. Dr. Bitran, you're now being

5 handed what's been marked as Defendant's Deposition

6 Exhibit No. 168. This is Bitran 68 through 70.

7 (Whereupon, Defendant's

8 Deposition Exhibit No. 168 was

9 marked for identification.)

10 BY MR. LISS:

11 Q. Is this your progress note from

12 Mr. Rascher's July 13, 2015, appointment?

13 A. Yes.

14 Q. And what was the reason for this visit?

15 A. To review the PET scan.

16 Q. That was the routine PET scan?

17 A. Yes.

18 Q. And it's more than seven months since the

19 last appointment. Is that significant?

20 A. Well, you know, he had the arthroplasty.

21 He had rehab. You know, he had lots of things that

22 were going on which took priority over surveillance

23 of his rectal cancer.

24 Q. You're referring to the orthopedic

1 conditions?

2 A. Correct.

3 Q. There's a note here that says Mr. Rascher  
4 was receiving physical therapy post-right hip  
5 arthroplasty. At this point when you saw him what  
6 did you observe regarding the effects of the  
7 surgery?

8 A. Well, I mean, you know, he was ambulating.  
9 I didn't note whether he was ambulating with a  
10 cane. I don't believe he was ambulating with a  
11 walker at this point but he was also very  
12 frustrated because I thought -- or he thought that  
13 he would be a lot further along in terms of his  
14 mobility.

15 Q. So where it says "frustrated at place,"  
16 does that mean pace?

17 A. Pace, yes.

18 Q. So was it your understanding that he was  
19 significantly limited at that point?

20 A. Well, he was limited because he wasn't --  
21 I think his concept was I'm going to be as good as  
22 I was prior to the time of this whole episode with  
23 the rectal cancer and kind of coming and going as I  
24 please and I think that it was -- he was frustrated

1 that he wasn't at that level.

2 Q. And to clarify, is that as a result of the  
3 orthopedic conditions?

4 A. Yes.

5 Q. Now you mention that you expected in  
6 February you thought that Mr. Rascher would likely  
7 have been able to return to work had it just been  
8 the treatment of his cancer.

9 A. Yes.

10 Q. Was it your understanding at this point  
11 that that was the case had his only treatment been  
12 regarding the maintenance and oversight of the  
13 cancer that he would have been okay to go back to  
14 work?

15 A. I believe so.

16 Q. You also noted that he was following up  
17 with his orthopedist. Was it your understanding  
18 that he at that point had ongoing appointments with  
19 orthopedic specialists?

20 A. Yes.

21 Q. There's also a note in the medication  
22 section that Mr. Rascher is taking Aleve and  
23 hydrocodone. Can you explain what hydrocodone is?

24 A. Hydrocodone is a narcotic. It's used in

1 the treatment of pain, and he was taking it because  
2 of the surgery that he had performed by Dr. Jimenez  
3 in terms of the right hip arthroplasty.

4 Q. From July he was continuing to still take  
5 the hydrocodone and is hydrocodone used for more  
6 extreme pain than other -- than Aleve?

7 A. Yes.

8 Q. So here you make a note in the physical  
9 examination section regarding pain and note that it  
10 is not related to the rectal cancer. You say four  
11 in the right hip and both breasts. Can you explain  
12 the significance of that?

13 A. Okay. So the pain was a four out of ten  
14 in the right hip, and he was complaining of some  
15 chest pain.

16 Q. And as of this time you still have the  
17 same notation in terms of the restrictions on his  
18 activities, correct?

19 A. Correct.

20 Q. Which has been consistent throughout?

21 A. Correct.

22 Q. Dr. Bitran, you're now being handed what's  
23 been marked previously in another deposition as  
24 Defendant's Deposition Exhibit No. 65.

1 A. Correct.

2 Q. And you said you were aware of the other  
3 medical problems for which he was being treated.  
4 Did you consult the orthopedic doctors when you  
5 issued this note?

6 A. No.

7 Q. So is there any reason that your opinion  
8 in this letter should be construed to override that  
9 of one of his treating specialists?

10 A. No.

11 Q. So when you say that Mr. Rascher could  
12 potentially do sedentary work, would you  
13 characterize your return to work letter as one with  
14 restrictions?

15 A. Yes, sedentary work.

16 Q. Dr. Bitran, you're now being handed what's  
17 been marked as Defendant's Deposition Exhibit  
18 No. 169. This is Bitran 71 through 73.

19 (Whereupon, Defendant's  
20 Deposition Exhibit No. 169 was  
21 marked for identification.)

22 BY MR. LISS:

23 Q. Is this your progress note for  
24 Mr. Rascher's January 18, 2016, appointment?

1 A. Yes.

2 Q. This is the first appointment that you had  
3 after you had issued that return to work letter  
4 that we just described?

5 A. Yes.

6 Q. And what was the reason for this  
7 appointment?

8 A. Just routine followup from the standpoint  
9 of his rectal cancer.

10 Q. And at this point in time what generally  
11 are you seeing Mr. Rascher for and then continuing  
12 on to present?

13 A. Again, it's just routine followup for the  
14 rectal cancer. I mean, more recently he's  
15 developed deep vein thromboses and was on  
16 anticoagulants, and he's had issues with edema.

17 Q. And what's the reason for him seeing an  
18 oncologist for those issues?

19 A. Well, the -- okay. So we do hematology  
20 and oncology; and many times when it comes to the  
21 anticoagulants, physicians, orthopedists, primary  
22 care physicians refer a patient to us for  
23 anticoagulant management.

24 Q. And for those conditions, what kinds of

1 effects do they have on one's mobility including  
2 their ability to walk around, their ability to  
3 stand for a period of time, their ability to sit  
4 for a period of time?

5 A. Well, with the deep vein thrombosis, it's  
6 severely limited because he had, you know,  
7 significant swelling in both lower extremities. He  
8 was on anticoagulants. It was exceedingly  
9 difficult for him to walk. He was using a cane to  
10 walk, and the deep vein thrombosis significantly  
11 impaired his overall mobility.

12 Q. And at what time period are you talking  
13 about with respect to that?

14 A. This is -- the deep vein thrombosis  
15 occurred last year, and he was taken off  
16 anticoagulants in the fall of last year.

17 Q. 2018?

18 A. 2018.

19 Q. In your note here there's a description of  
20 two kyphoplasties. What is that?

21 A. So he had fractured bones in his back.  
22 The bone collapsed upon itself, so he needed the  
23 bone to be blown up which is what the kyphoplasty  
24 procedure is for.



1 Q. And what kind of limitations would that  
2 condition or two of those conditions have on  
3 Mr. Rascher?

4 A. Well, they would probably prevent him from  
5 even doing sedentary work.

6 Q. And one of those kyphoplasties was in 2015  
7 and one in 2016, is that correct?

8 A. That's correct.

9 Q. Do you recall when in 2015?

10 A. I would have to go back and look at my  
11 records.

12 Q. And I take it if it's marked in a  
13 January 18, 2016, document that you recorded and  
14 this kyphoplasty took place in 2016 prior to that  
15 appointment, it must have been sometime between the  
16 first of the year and that appointment?

17 A. Correct.

18 Q. Did you make any specific observations as  
19 to how you viewed Mr. Rascher's limitations or  
20 restrictions at that appointment?

21 A. No, other than the fact that he was using  
22 a cane but he was preparing meals and doing his own  
23 housework.

24 Q. And at this point he's still taking

1 hydrocodone?

2 A. Yes.

3 Q. Was that consistent?

4 A. Yes.

5 Q. In your impression notes you indicate that

6 there's a need for every six months following up

7 with labs. Is that with respect to routine

8 maintenance of cancer treatment?

9 A. Yes.

10 Q. Dr. Bitran, you are now being handed

11 what's been marked as Defendant's Deposition

12 Exhibit 170. This is Bitran 167 and 168.

13 (Whereupon, Defendant's

14 Deposition Exhibit No. 170 was

15 marked for identification.)

16 BY MR. LISS:

17 Q. Dr. Bitran, is this the July 13, 2016,

18 report for the PET/CT whole body study that you

19 referred Mr. Rascher for?

20 A. Yes.

21 Q. It's again signed by another doctor, but

22 is it still something you reviewed and part of your

23 records?

24 A. Yes.

1 MR. LISS: We will, and we'll designate this as  
2 confidential, yes?

3 MS. DORAN: Yes, thank you. Yes, on behalf of  
4 Mr. Rascher, I would like to designate the  
5 deposition as confidential and subject to the  
6 protective order.

7 MS. REPORTER: Would you like to order a copy?

8 MS. DORAN: Not at this time.

9 MR. COHEN: EEOC will order.

10 FURTHER DEPONENT SAITH NOT  
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# Exhibit L

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Official Court Reporter: NANCY L. BISTANY, CSR, RPR, FCRR  
219 South Dearborn Street, Room 1706  
Chicago, Illinois 60604  
(312) 435-7626  
*nancy\_bistany@ilnd.uscourts.gov*

1 (Proceedings heard in open court:)

2 THE CLERK: 17 C 6753, EEOC versus S&C Electric.

3 MR. FIORITO: Good morning, Your Honor.

4 Brad Fiorito for the EEOC.

5 MS. DORAN: Good afternoon, Your Honor.

6 Joette Doran on behalf of Richard Rascher.

7 MR. BRENNEMAN: Good afternoon, Your Honor.

8 Steve Brenneman with Brandon Liss here for defendant  
9 S&C Electric Company.

10 THE COURT: Good afternoon, folks.

11 All right. So I asked you to come in because I had  
12 some questions that I didn't think were completely answered by  
13 the papers that I have reviewed. I've run through them again.

14 And before we get to anything, I just wanted to  
15 disclose to you that I -- that I noticed for maybe not the  
16 first time, but it was driven home to me when I reviewed the  
17 documents again that there are some doctors from Illinois Bone  
18 and Joint who were --

19 MR. FIORITO: I didn't hear the last thing you just  
20 said.

21 THE COURT: There are some doctors from Illinois Bone  
22 and Joint --

23 MS. DORAN: Yes.

24 THE COURT: -- in this case. My son-in-law is a  
25 partner at Illinois Bone and Joint. In fact, I have an

1 he might have -- he might have been led to believe that he  
2 didn't even have to think about an accommodation. And that's  
3 what's bothering me here.

4 MR. BRENNEMAN: Here's --

5 THE COURT: The whole point of the interactive  
6 process is that the burden is on both parties to do that.

7 And I know if somebody ever asks for one, there may  
8 be situations -- and I know some cases that say that, that you  
9 don't have to even talk about it. But here he really didn't  
10 know he was going to be fired until he was fired.

11 MR. BRENNEMAN: Your Honor, here's what --

12 THE COURT: And then -- excuse me.

13 And the other thing that you've said -- and I don't  
14 think I accept this, frankly -- is that, you know, his time --  
15 that his period was up on August 29th. That was clearly waived  
16 because you were still dealing with him after this. He saw the  
17 doctor on the 31st and then gave you his papers after that in  
18 September. And you were still making decisions, it seems to  
19 me, around the doctors to terminate him.

20 So I just think there's a lot of factual nuance here  
21 that leaves me very uncomfortable, even though I realize that  
22 there are good points to be made on both sides here.

23 MR. BRENNEMAN: Let me try to address those points,  
24 Your Honor.

25 First of all, counsel misstated the record on what

# Exhibit M



UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
et al.	)	CASE NO.:
	)	1:17-CV-06753
Plaintiff,	)	
	)	JUDGE ROBERT W.
v.	)	GETTLEMAN
	)	
S&C ELECTRIC COMPANY	)	MAGISTRATE JUDGE
	)	MARIA VALDEZ
Defendant.	)	

---

DEPOSITION OF MARCIA BURTON  
TAKEN ON DECEMBER 19, 2018 AT 10:07 AM

1 APPEARANCES:

2 UNITED STATES EQUAL EMPLOYMENT  
3 OPPORTUNITY COMMISSION

4 BY: MS. DIANE SMASON  
5 & MR. BRADLEY FIORITO

6 500 West Madison, Room 2000  
7 Chicago, IL 60661  
8 312.869.8104

9 Diane.Smason@EEOC.gov

10 Appearing on behalf of the Plaintiffs;

11 FOX, SWIBEL, LEVIN & CARROLL, LLP

12 BY: MR. STEVEN L. BRENNEMAN

13 200 West Madison Street, Suite 3000  
14 Chicago, IL 60606  
15 312.224.1206

16 sbrenneman@foxswibel.com

17 Appearing on behalf of S&C Electric Co;

18 JOETTE S. DORAN & ASSOCIATES, P.C.

19 BY: MS. JOETTE S. DORAN, ESQ.

20 2300 North Barrington Road, Suite 400  
21 Hoffman Estates, IL 60169  
22 847.490.5309

23 joette@joettedoran.com

24 Appearing on behalf of Richard Rascher.

ALSO PRESENT:

MR. STEPHEN GOETHALS

MS. DONNA BAGGETT

1 MS. SMASON: The witness, please.

2 M A R C I A B U R T O N ,

3 called as a witness herein, having been  
4 first duly sworn, was examined and testified as  
5 follows:

6 THE COURT REPORTER: Please raise your right  
7 hand. Do you swear or affirm that the testimony you  
8 give will be the truth, the whole truth and nothing  
9 but the truth so help you God?

10 THE WITNESS: Yes, I do.

11 THE COURT REPORTER: I'll just -- I have a  
12 short redone. And then --

13 MS. SMASON: Sure.

14 THE COURT REPORTER: -- we are on the  
15 record. The time is 10:07 a.m. This is the  
16 deposition of Marcia Burton in the matter of EEOC  
17 versus S&C Electric Company. My name is Stephen  
18 Goethals of Thompson Court Reporters.

19 Will counsel please introduce themselves for  
20 the record and state whom they represent.

21 MS. SMASON: I'm Diane Smason on behalf of  
22 Plaintiff, EEOC.

23 MR. FIORITO: Brad Fiorito on behalf of  
24 EEOC.

1 be cleared to return to work, he needed to know this  
2 information and understand what the next steps of the  
3 process would be for him.

4 Q: Did you have any expectation that he  
5 would not be cleared by Health Services?

6 A: No.

7 Q: And did you go through each of these  
8 items and check them off as you spoke to him about  
9 them?

10 A: Yes.

11 Q: So is it that you asked him, do you have  
12 medical coverage? And he says yes or no?

13 A: No.

14 Q: How does that work?

15 A: No, I go through it. Noting that yes,  
16 he does have medical coverage with us, dental.  
17 Whether or not he's eligible for the retiree coverage  
18 or he needs Medicare. So this is a checklist for  
19 myself.

20 Q: And are you doing this in front of him  
21 such that he can see this or did you do this after you  
22 met with him?

23 A: No, this was done in front of him.

24 Q: On the second page, the third box, it

1 says "verify effective date of retirement". Is that  
2 your handwriting "8/29/2015" --

3 A: Yes.

4 Q: -- then "(LTD retirement)"?

5 A: Yes.

6 Q: Why did you write that date?

7 A: Because that was the date that was  
8 communicated to him in all of the letters in regards  
9 to the one year from his last day worked.

10 Q: But he told you when you met with him on  
11 August 20th that he intended to provide documentation  
12 from his doctors to Health Services, right?

13 A: Yes.

14 Q: So why did you anticipate that he would  
15 be retired on August 29th, which was only nine days  
16 later?

17 A: In the event he was not cleared to  
18 return to work, this was the date that was going to be  
19 used to proceed with his termination of employment.

20 Q: So is it your practice to put down the  
21 date that is one year from when someone went on leave,  
22 whether or not they actually were terminated from the  
23 company on that date?

24 MR. BRENNEMAN: Objection.

1           Go ahead.

2           A: Can you rephrase that? I didn't  
3 understand that.

4           Q: I'm trying to find out why you put that  
5 date down when nine days before that date, you did not  
6 know if he would be cleared to return to work?

7           MR. BRENNEMAN: It's been asked and  
8 answered.

9           Go ahead.

10          A: It's a standard process.

11          Q: And what is the standard process?

12          A: The standard process is we use the date  
13 one year from last they worked for the termination.  
14 If somebody is able to return to work and they, you  
15 know, are, you know, able to return then we don't  
16 proceed with the termination. But in the event that  
17 we do, the individual needs to be aware of what's  
18 going to happen.

19          Q: And why did you write LTD retirement  
20 there?

21          A: Because when somebody's employment  
22 ending due to LTD and they are over age 65, we refer  
23 to it as an LTD retirement.

24          Q: And in your meeting with Mr. Rascher on

1 29th to do so.

2 Q: And you told him that?

3 A: Yes.

4 Q: And you told him as you wrote here "if  
5 he is not clear to return, then we will proceed with  
6 termination and it will be an LTD retirement"?

7 A: Yes.

8 Q: What did he say in response to that?

9 A: I don't recall if he responded.

10 Q: And then you said "discuss with Rich  
11 that this is our policy regarding separation, that if  
12 an employee is out for one year and they are not able  
13 to return at that point, they are separated", correct?

14 A: Yes.

15 Q: Did you tell him anything else about the  
16 termination process?

17 A: Not other than what we covered.

18 Q: Did he ask you any questions in this  
19 meeting?

20 A: I don't recall what questions he -- he  
21 had asked me. It may have been going back to what we  
22 covered in the letter. Talking about medical  
23 coverage, applying for Medicare, benefits  
24 continuation.

Re: Deposition of **Marcia Burton**  
12/19/2018  
EEOC v S&C

I wish to make changes for the following reasons:

Page Line

<u>10</u>	<u>3</u>	Change:	<u>Bryn Mawr in Cumberland (in should be and)</u>
		Reason:	<u>transcription incorrect</u>
<u>11</u>	<u>13</u>	Change:	<u>assitance - change to (a systems)</u>
		Reason:	<u>transcription incorrect</u>
<u>13</u>	<u>3</u>	Change:	<u>or - change to (for)</u>
		Reason:	<u>transcription incorrect</u>
<u>19</u>	<u>24</u>	Change:	<u>under - change to (on their)</u>
		Reason:	<u>transcription incorrect</u>
<u>20</u>	<u>6</u>	Change:	<u>inaudible - change to (I am)</u>
		Reason:	<u>transcription incorrect</u>
<u>41</u>	<u>13</u>	Change:	<u>on - change to (in)</u>
		Reason:	<u>transcription incorrect</u>
<u>43</u>	<u>5</u>	Change:	<u>that up - change to (out)</u>
		Reason:	<u>transcription incorrect</u>

Signed: Marcia Burton

12580

Date: 1-29-2019 Sheet 1 of 3



Re: Deposition of **Marcia Burton**  
12/19/2018  
EEOC v S&C

I wish to make changes for the following reasons:

Page Line

<u>71</u>	<u>5</u>	Change:	<u>that - change to (is what)</u>
		Reason:	<u>transcription incorrect</u>
<u>74</u>	<u>1</u>	Change:	<u>appointment - change to (employment)</u>
		Reason:	<u>transcription incorrect</u>
<u>74</u>	<u>13</u>	Change:	<u>and - change to (on)</u>
		Reason:	<u>transcription incorrect</u>
<u>85</u>	<u>7</u>	Change:	<u>inaudible - <sup>change to</sup> (the question)</u>
		Reason:	<u>transcription incorrect</u>
<u>90</u>	<u>15</u>	Change:	<u>agnd - change to (and)</u>
		Reason:	<u>transcription incorrect</u>
<u>90</u>	<u>20</u>	Change:	<u>long - change to (well)</u>
		Reason:	<u>transcription incorrect</u>
<u>111</u>	<u>4</u>	Change:	<u>refuse - change to (reviews)</u>
		Reason:	<u>transcription incorrect</u>

Signed: Marcia Burton

12580

Date: 1-29-2019 Sheet 2 of 3

Re: Deposition of **Marcia Burton**  
12/19/2018  
EEOC v S&C

I wish to make changes for the following reasons:

Page Line

117 8 Change: we - change to (we've)  
Reason: transcription incorrect

159 13 Change: them - change to (him)  
Reason: transcription incorrect

26 23 Change: non-occupational nurse - change to (occupational nurse)  
Reason: transcription incorrect

131 6 Change: me - change to (meet)  
Reason: transcription incorrect

\_\_\_\_ Change: \_\_\_\_\_  
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Signed: Marcia Burton

12580

Date: 1-29-2019 Sheet 3 of 3

# Exhibit N

# RICHARD L. RASCHER

## FUNERAL HOME

Lauterburg - Oehler Funeral  
Home  
2000 East Northwest Highway  
Arlington Heights, IL 60004

[Send Flowers](#)

**M**OUNT PROSPECT - Richard L. Rascher, 79, was born June 1, 1941, to Henry and Caroline (Bohne) Rascher and passed away May 5, 2021. Richard was the beloved husband of the late Susan; loving father of Christopher Rascher and Stephanie Rascher; dear brother of the late Patricia (late Dick) von Kampen; devoted uncle of Kurt (Jen) von Kampen, Keith (Laura) von Kampen and Kevin (Sonja) von Kampen; great-uncle of Sarah, David, Lucas, Danica, Rennianah and Ronald; fond cousin of Janice (Scott) Allen, and preceded in death by his cherished dogs, Ozzie and Patch. Richard was a 1959 graduate of Arlington High School in Arlington Heights and went on to become a Principal Designer for S & C Electric Company retiring after 52 years of service. He loved antique cars and was a member of the Kaiser Darrin Car Club. He also enjoyed all sports especially hockey and baseball and had been to many of the Cubs Conventions. Richard loved music and would often take his dog Ozzie to the Mt. Prospect Park District Community Band Concerts at Lions Park. Visitation will be Wednesday, May 12, 2021

from 4-7 PM at Lauterburg & Oehler Funeral Home, 2000 E. Northwest Highway, Arlington Heights and Thursday, May 13 from 10 AM until the time of the Funeral Service at 11 AM at St. Paul Lutheran Church, 100 S. School Street, Mt. Prospect. Interment will follow at Mt. Emblem Cemetery in Elmhurst. In lieu of flowers, contributions to The Buddy Foundation, 65 W. Seegers Road, Arlington Heights, IL 60005 ([thebuddyfoundation.org](http://thebuddyfoundation.org)) appreciated. Funeral information, 847-253-5423 or [lauterburgoehler.com](http://lauterburgoehler.com).



To plant trees in memory, please visit our [Sympathy Store](#).

Published by Daily Herald from May 9 to May 11, 2021.

## MEMORIAL EVENTS

**MAY  
12**

### Visitation

4:00p.m. - 7:00p.m.

Lauterburg - Oehler F...  
2000 East Northwest  
Highway, Arlington  
Heights, IL 60004



Send Flowers

**MAY  
13**

### Visitation

10:00a.m. - 11:00a.m.

St. Paul Lutheran Chur...  
100 S. School Street, Mt.  
Prospect, Illinois



Send Flowers

**MAY  
13**

### Funeral

11:00a.m

St. Paul L  
100 S. Scl  
Prospect,



Se

# Exhibit O

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

From: Peter Dodzik

From: (847) 577-0904

To: Lutheran Home Social L... (847) 754-3354

Page 2 of 2 03/26/2015 11:17 AM

1304

## Northwest Behavioral Health Services

121 S. Wilke Rd STE 200  
Arlington Heights, IL 60005

Phone: (847) 577-0904

Fax (847) 577-1558

www.nwbhs.net



03-26-2015

### NEUROPSYCHOLOGICAL CONSULTATION

**Patient's Name:** Richard Rascher**Date of Birth:** 06-01-1941**Psychologist:** Peter Dodzik, Psy.D., ABPdN, ABN Age: 73**Referring Physician:** Theodore Homa, MD (Phone: 847-754-3624)**Length of Consult:** 1 Unit**Date of Consult:** 03-26-2015

Mr. Rascher was seen for a psychological consultation while on the rehabilitation and at the Lutheran Home. He has a history of multiple medical issues dating back to May 2014. My understanding is that he was working full-time up until recently. He was diagnosed with rectal cancer last year and underwent resection, chemotherapy and had a colostomy bag until recently. He also has a history of gout, which has been treated often on with prednisone and drainage. This year he underwent a total hip replacement and continues to be unable to bear weight on that leg. Consequently, his rehabilitation has been delayed considerably. Recently, he was diagnosed with norovirus and C-Diff and has undergone a course of antibiotics and rehydration.

He was seen recently by psychiatry due to increasing symptoms of depression. There is a long-standing history of difficulty within his family. His wife died of an embolism nearly 20 years ago and his daughter returned from college to help take care of him and his home after that. She moved out for five years ago but continues to help with his day-to-day affairs and more actively since he has been hospitalized. He reports that there has been a tremendous amount of tension with his daughter in recent years. She has told him that he is responsible for "ruining her life", making excessive demands of her and there certainly seems to be issues of enmeshment and guilt. His son is somewhat less actively involved though Mr. Rascher has concerns of alcohol and drug use with him and indicated that neither child maintains meaningful or consistent employment.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

From: Peter Dodzik

From: (847) 577-0904

To: Lutheran Home Social Work (847) 754-3354

Page 2 of 2 03/26/2015 11:17 AM

**Confidential Medical Record for Richard Rascher**  
**Dob: 06-01-1941**

He has accumulated a rather substantial home-equity loan over the years and much of this is the result of money spent on his children and their debts. He has worked full-time until his illnesses and has disability until August where he must return to work or lose his job. He needs to work financially and appears to derive enjoyment from it.

My understanding is that his insurance will not pay for continued inpatient stay given that he has eight more weeks until he can bear weight on his leg. However, the alternative would be to return to his home and given the extent of his G.I. infection, chronic diarrhea, physical limitations and delayed treatment of his cancer, I have grave concerns regarding his ability to function at home. I met with social work and asked if we could consider an extension based on his emerging depression, limited resources, physical deficits, and unresolved systemic infections. Otherwise, he would need home health support and potentially two people at unpredictable times during the day to aid with his diarrhea. He is currently wearing a diaper and I frankly think he would benefit from a prolonged stay at least until such time as these issues resolved.

We have arranged to meet with them tomorrow and following his discharge. I want to help set limits with his kids, buildings and structure of home health support, plan for outpatient rehabilitation and work with his employer to establish adequate time for return to work. I will follow-up with Dr. Homa as soon as possible.



Peter A. Dodzik, Psy.D, HSPP  
Board Certified, Pediatric Neuropsychology  
Board Certified, Professional Neuropsychology  
Indiana License #20041718  
Illinois License #071-006408

PAD/clb  
(Dictated but not read for expediency)



# Exhibit P

**RASCHER, RICHARD L**

73 Y old Male, DOB: 06/01/1941

Account Number: 52141

605 S GEORGE ST, MOUNT PROSPECT, IL-60056-3915

Home: 847-404-3402

Guarantor: RASCHER, RICHARD L Insurance: BLUE

CROSS BLUE SHIELD OF ILLINOIS Payer ID: SB621

PCP: Gabriel Kibrit, MD Referring: Marc Fine, MD

Appointment Facility: LM Prasad, MD, SC

01/13/2015

Progress Notes: John J Park, MD

**Current Medications****Taking**

- Acetaminophen Extra Strength 500 mg Tablet 1 tablet as needed every 4 hrs
- Hydrocodone-Acetaminophen Tablet 1 tablet every 3 hrs
- Loperamide HCl 2 MG Tablet 1 tablet every 8 hours
- Xarelto 15 MG Tablet 1 tablet twice a day (bid)
- Diphenoxylate-Atropine 2.5-0.025 MG Tablet 1 tablet as needed Four times a day
- Discontinued**
- Lomotil 2.5-0.025 MG Tablet 1 tablet three times a day with each meal
- Aleve
- Megestrol Acetate 800 MG/20ML Suspension 1 ml
- Ondansetron HCl 8 MG Tablet 1 tablet Once a day
- Prochlorperazine Maleate 10 mg Tablet 1 tablet
- Medication List reviewed and reconciled with the patient

**Past Medical History**

Rectal cancer

**Surgical History**

Laparoscopic ultra low anterior resection with coloanal anastomosis 09/17/2014  
Ileostomy reversal 12/22/2014

**Family History**

Non-Contributory

**Social History****TOBACCO USE:**

TOBACCO USE- Are you a: Non tobacco user.

**AUDIT-C:**

Alcohol Points: 0, Interpretation: Negative.

**Allergies**

N.K.D.A.

**Hospitalization/Major****Reason for Appointment**

1. Patient c/o difficulty using the bathroom, and mushy stool. Patient also c/o swollen ankles.

**History of Present Illness**Visit:

The patient returns. He was recently admitted for ascitic drainage coming from his ileostomy reversal site. He has also been complaining of incontinence. He was in the hospital for a few days and placed on anti-diarrheals. He put a stoma appliance over the stoma site, which has since dried up.

**Vital Signs**

Temp 97.1 F, Ht 6 ft 4 in, Wt 184 lbs, BMI 22.39 Index, HR 72 /min, BP-Treatment 109/57 mm Hg.

**Physical Examination**

There is only a bandage over the ileostomy closure site as that area is now closed. Rest of his abdominal exam is unremarkable. He has an inguinal hernia repair done by Dr. Khorsand in the left groin. Lower extremity exam shows significant +2 pitting edema.

**Assessments**

1. Stoma complication - 569.60 (Primary)
2. History of cancer: anorectal - V10.06

+2 pitting edema after re-admission to the hospital for ascitic drainage from the wound.

**Treatment****1. Stoma complication**

Clinical Notes: He has been on a liquid diet, but I said it would be okay to advance him to a soft diet. This should help with the edema as he has been drinking a lot of liquids. He does not have shortness of breath or any cardiac issues, so I think it is safe for us to send him back out. I did tell him to go see his medical doctor for a water pill if his pitting edema does not improve. In the meantime, the soft diet should also help with that. He will follow up with me in three weeks. I told him to continue with Imodium three times a day as well as Metamucil one tablespoon in 4 ounces of water twice a day.

**Diagnostic Procedure**

Laparoscopic ultra low anterior resection  
with coloanal anastomosis 09/17/2014  
Dehydration and acute kidney failure  
11/25/2014  
Ileostomy reversal 12/22/2014

**2. Others**

Continue Diphenoxylate-Atropine Tablet, 2.5-0.025 MG, 1 tablet as  
needed, Orally, Four times a day  
Continue Xarelto Tablet, 15 MG, 1 tablet, Orally, twice a day (bid)  
Continue Loperamide HCl Tablet, 2 MG, 1 tablet, Orally, every 8 hours  
Continue Hydrocodone-Acetaminophen Tablet, 1 tablet, Orally, every 3  
hrs  
Continue Acetaminophen Extra Strength Tablet, 500 mg, 1 tablet as  
needed, Orally, every 4 hrs  
Notes: Patient Education was published to portal.

**Procedure Codes**

99024 POSTOP\*Global\*\*\*

**Follow Up**

3 Weeks



Electronically signed by JOHN PARK M.D., MD on  
01/21/2015 at 01:44 PM CST

Sign off status: Completed

LM Prasad, MD, SC  
1550 NORTHWEST HIGHWAY  
PARK RIDGE, IL 60068-1458  
Tel: 847-759-1110  
Fax: 847-759-8273

Patient: RASCHER, RICHARD L DOB: 06/01/1941 Progress Note: John J Park, MD 01/13/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

**RASCHER, RICHARD L**

73 Y old Male, DOB: 06/01/1941

Account Number: 52141

605 S GEORGE ST, MOUNT PROSPECT, IL-60056-3915

Home: 847-404-3402

Guarantor: RASCHER, RICHARD L Insurance: BLUE

CROSS BLUE SHIELD OF ILLINOIS

PCP: Gabriel Kibrit, MD Referring: Marc Fine, MD

Appointment Facility: LM Prasad, MD, SC

04/16/2015

Progress Notes: Leela M Prasad, MD

**Reason for Appointment**

1. Patient is here today for a surgical consultation - Per medical director Dr.Theo Homa schedule cscope dx blood loss

**History of Present Illness**Visit:

The patient is here for possibility of anemia. The patient has a long history. He had a history of rectal cancer and was taken care of by Dr. Park. Recently, he had a hip replacement by Dr. Jimenez and now he is having anemia postoperatively. The doctor at the nursing home did a Hemocult test that was positive and is sent here for a colonoscopy. Because of his recent multiple surgeries, I decided that the decision should be made by Dr. Park.

**Current Medications****Taking**

- Loperamide HCl 2 MG Tablet 1 tablet every 8 hours
- Hydrocodone-Acetaminophen Tablet 1 tablet every 3 hrs
- Acetaminophen Extra Strength 325MG Tablet 1 tablet as needed every 6 hrs
- Metamucil 30.9 % Powder as directed twice a day (1/2 glass water)
- Folic Acid 1 MG Tablet 1 tablet Once a day
- Ferrous Sulfate 325 (65 Fe) MG Tablet 1 tablet Once a day
- Procrit 10000 UNIT/ML Solution
- MethylPREDNISolone 4 MG Tablet
- Colchicine 0.6 MG Tablet 1 tablet Once a day
- Ensure
- Medrol (Pak)
- Juven
- Vancomycin HCl 125 MG Capsule 1 capsule once a day
- Gabapentin 300 MG Capsule 1 capsule twice a day (bid)
- Omeprazole 20 MG Capsule Delayed Release 1 capsule Once a day
- PredniSONE 2.5 MG Tablet 1 tablet with food or milk Twice a day
- Reguloid
- Dulcolax 10 MG Suppository Once a day
- Hydrocodone-APAP-Dietary Prod 10-325 MG Miscellaneous
- Milk of Magnesia
- Senna Plus
- Simethicone-80

**Discontinued**

- Diphenoxylate-Atropine 2.5-0.025 MG Tablet 1 tablet as needed Three times a day
- Xarelto 15 MG Tablet 1 tablet twice a day (bid)
- Aleve
- Megestrol Acetate 800 MG/20ML Suspension 1 ml
- Ondansetron HCl 8 MG Tablet 1 tablet Once a day
- Prochlorperazine Maleate 10 mg Tablet 1 tablet
- Medication List reviewed and reconciled with the patient

Patient: RASCHER, RICHARD L DOB: 06/01/1941 Progress Note: Leela M Prasad, MD 04/16/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

LM Prasad050

**Past Medical History**

Inguinal hernia  
Rectal cancer  
Rectal polyp

**Surgical History**

Flexible sigmoidoscopy, ERUS 05/09/2014  
Flexible sigmoidoscopy w BX, ERUS 08/29/2014  
Laparoscopic ultra low anterior resection with coloanal anastomosis 09/17/2014  
Flexible sigmoidoscopy 12/19/2014  
Ileostomy reversal 12/22/2014  
Repair of indirect large left inguinal hernia with high ligation. 01/06/2015  
Total hip replacement 02/20/2015

**Family History**

Non-Contributory

**Social History**TOBACCO USE:

TOBACCO USE- Are you a: Non tobacco user .

AUDIT-C:

Alcohol Points: 0, Interpretation: Negative.

**Allergies**

N.K.D.A.

**Hospitalization/Major Diagnostic Procedure**

Laparoscopic ultra low anterior resection with coloanal anastomosis 09/17/2014  
Dehydration and acute kidney failure 11/25/2014  
Ileostomy reversal 12/22/2014  
Repair of indirect large left inguinal hernia with high ligation. 01/06/2015  
Total hip replacement 02/20/2015

**Vital Signs**

Temp 98.9 F, Ht 6 ft 4 in, HR 76 /min, BP-Treatment 170/84 mm Hg  
Unable to get patient's weight intake 4/17/15 -SM.

**Physical Examination**

His abdominal examination at this time is completely normal. The patient is not orthostatic.

**Assessments**

1. History of cancer: anorectal - V10.06 (Primary)
2. Anemia - 285.29
1. Anemia with a hemoglobin of 7.7 g/dL and Hemocult test positive.
2. Last year, he had surgery for rectal cancer with ileostomy followed by ileostomy closure.
3. Recently he had hip replacement surgery.

**Treatment****1. History of cancer: anorectal**

Notes: Patient Education was printed.

Clinical Notes: Because of all these multiple procedures, I have advised him to come in and see Dr. Park sometime in May 2015, at which time he can decide about his colonoscopy.

**2. Others**

Continue Simethicone-80  
Continue Senna Plus  
Continue Milk of Magnesia  
Continue Hydrocodone-APAP-Dietary Prod Miscellaneous, 10-325 MG, Orally

Summary View for RASCHER, RICHARD L

Page 3 of 3

Continue Dulcolax Suppository, 10 MG, Rectal, Once a day  
 Continue Reguloid  
 Continue PredniSONE Tablet, 2.5 MG, 1 tablet with food or milk, Orally, Twice a day  
 Continue Omeprazole Capsule Delayed Release, 20 MG, 1 capsule, Orally, Once a day  
 Continue Gabapentin Capsule, 300 MG, 1 capsule, Orally, twice a day (bid)  
 Continue Vancomycin HCl Capsule, 125 MG, 1 capsule, Orally, once a day  
 Continue Juven  
 Continue Medrol (Pak)  
 Continue Ensure  
 Continue Colchicine Tablet, 0.6 MG, 1 tablet, Orally, Once a day  
 Continue MethylPREDNISolone Tablet, 4 MG, Orally  
 Continue Procrit Solution, 10000 UNT/ML, Injection  
 Continue Ferrous Sulfate Tablet, 325 (65 Fe) MG, 1 tablet, Orally, Once a day  
 Continue Folic Acid Tablet, 1 MG, 1 tablet, Orally, Once a day  
 Continue Metamucil Powder, 30.9 %, as directed, Orally, twice a day (1/2 glass water)  
 Continue Acetaminophen Extra Strength Tablet, 325MG, 1 tablet as needed, Orally, every 6 hrs  
 Continue Hydrocodone-Acetaminophen Tablet, 1 tablet, Orally, every 3 hrs  
 Continue Loperamide HCl Tablet, 2 MG, 1 tablet, Orally, every 8 hours

**Follow Up**

Follow up with Dr.Park.

Electronically signed by LEELA PRASAD MD on 05/01/2015 at 03:39 PM CDT

Sign off status: Completed

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LM Prasad, MD, SC  
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 PARK RIDGE, IL 60068-1458  
 Tel: 847-759-1110  
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Patient: RASCHER, RICHARD L DOB: 06/01/1941 Progress Note: Leela M Prasad, MD 04/16/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

LM Prasad052



**RASCHER, RICHARD L**

74 Y old Male, DOB: 06/01/1941

Account Number: 52141

605 S GEORGE ST, MOUNT PROSPECT, IL-60056-3915

Home: 847-404-3402

Guarantor: RASCHER, RICHARD L Insurance: BLUE

CROSS BLUE SHIELD OF ILLINOIS Payer ID: SB621

PCP: Gabriel Kibrit, MD Referring: Marc Fine, MD

Appointment Facility: LM Prasad, MD, SC

09/24/2015

Progress Notes: John J Park, MD

**Current Medications****Taking**

- Colchicine 0.6 MG Tablet 1 tablet Once a day
- Dulcolax 10 MG Suppository Once a day
- Tramadol-Acetaminophen 50 mg Tablet four times a day (qid)
- Meloxicam 15 mg Tablet 1 tablet as needed (prn)
- Potassium Chloride 20MEQ ER 1 TABLET Once a day
- Furosemide 20 mg 1 tablet daily
- Ferrous Sulfate 325 (65 Fe) MG Tablet 1 tablet Once a day

**Discontinued**

- Ensure
- Medrol (Pak)
- Juven
- Omeprazole 20 MG Capsule Delayed Release 1 capsule Once a day
- PrednisONE 2.5 MG Tablet 1 tablet with food or milk Twice a day
- Reguloid
- Hydrocodone-APAP Dietary Prod 10-325 MG Miscellaneous
- Milk of Magnesia
- Senna Plus
- Simethicone-80
- Loperamide HCl 2 MG Tablet 1 tablet every 8 hours
- Hydrocodone-Acetaminophen Tablet 1 tablet every 3 hrs
- Acetaminophen Extra Strength 325MG Tablet 1 tablet as needed every 6 hrs
- Metamucil 30.9 % Powder as directed twice a day (1/2 glass water)
- Folic Acid 1 MG Tablet 1 tablet Once a day
- Procrit 10000 UNIT/ML Solution
- MethylPREDNISolone 4 MG Tablet
- Gabapentin 300 MG Capsule 1 capsule twice a day (bid)
- Vancomycin HCl 125 MG Capsule 1 capsule once a day
- Medication List reviewed and reconciled with the patient

**Past Medical History**

Anemia

**Reason for Appointment**

1. Patient is here for a 4 month follow up - s/p LSC ULAR 9/17/2014, s/p Ileostomy reversal 12/22/2014 - Hx: Rectal cancer

**History of Present Illness**Visit:

The patient returns. He is here for followup for coloanal pull-through procedure. His continence has gotten better primarily because the medications he has been taking has caused him to have some constipation. That is fortunate as he is no longer having accidents.

**Vital Signs**

Temp 97.1 F, Ht 6 ft 4 in, Wt 166 lbs, BMI 20.20 Index, HR 101 /min, BP-Treatment 141/76 mm Hg.

**Physical Examination**

His abdomen is soft and nontender. He has no hepato or splenomegaly. The incisions are well healed. No incisional hernias are seen. He has no inguinal lymphadenopathy. Lower extremity exam shows no clubbing, cyanosis or edema. Rectal exam shows improved sphincter tone. Anastomosis is palpable. No new masses are seen. There is no blood per rectum.

**Assessments**

1. History of cancer: anorectal - V10.06 (Primary)

History of rectal cancer with no evidence of recurrent disease.

**Treatment****1. Others**

Continue Colchicine Tablet, 0.6 MG, 1 tablet, Orally, Once a day  
Continue Dulcolax Suppository, 10 MG, Rectal, Once a day  
Continue Tramadol-Acetaminophen Tablet, 50 mg, Orally, four times a day (qid)  
Continue Meloxicam Tablet, 15 mg, 1 tablet, orally, as needed (prn)  
Continue Furosemide, 20 mg, 1 tablet, daily  
Continue Ferrous Sulfate Tablet, 325 (65 Fe) MG, 1 tablet, Orally, Once a day  
Continue Potassium Chloride, 20MEQ ER, 1 TABLET, Orally, Once a day

Notes: Patient Education was printed-09/24/15.

Inguinal hernia  
Rectal cancer  
Rectal polyp

### Surgical History

Flexible sigmoidoscopy, Endorectal ultrasound  
05/09/2014  
Flexible sigmoidoscopy w biopsy and endorectal  
ultrasound 08/29/2014  
Laparoscopic ultra low anterior resection  
with coloanal anastomosis 09/17/2014  
Flexible sigmoidoscopy 12/19/2014  
Ileostomy reversal 12/22/2014  
Repair of indirect large left inguinal hernia  
with high ligation. 01/06/2015  
Total hip replacement 02/20/2015

### Family History

Non-Contributory

### Social History

#### TOBACCO USE:

TOBACCO USE- Are you a: Non tobacco  
user.

#### AUDIT-C:

Alcohol Points: 0, Interpretation: Negative.

### Allergies

N.K.D.A.

### Hospitalization/Major

#### Diagnostic Procedure

Laparoscopic ultra low anterior resection  
with coloanal anastomosis 09/17/2014  
Dehydration and acute kidney failure  
11/25/2014  
Ileostomy reversal 12/22/2014  
Repair of indirect large left inguinal hernia  
with high ligation. 01/06/2015  
Total hip replacement 02/20/2015

Clinical Notes: 1. Follow up in three months for a repeat examination.  
2. Follow up with Dr. Mark Fine for colonoscopy as he is now due.

### Preventive Medicine

#### COUNSELING:

##### BMI MANAGEMENT

BMI Management Provided & Dietary Consultation Order  
Provided Yes

EXERCISE ASSESSMENT PROVIDED: Yes

Patient received educational materials on physical activity- Yes

Agreed upon exercise goal- >60 minutes

Nutrition/Dietary Counseling- Yes

Agreed upon fruits and vegetables goal- at least 3 servings per  
day

Agreed upon weekly limit for eating high fat foods- 3 or less

Given printed information about nutrition- Yes

Health & nutrition packet given to patient-09/24-ER.

### Follow Up

3 Months

Electronically signed by JOHN PARK M.D., MD on  
10/16/2015 at 08:53 AM CDT

Sign off status: Completed

LM Prasad, MD, SC  
1550 NORTHWEST HIGHWAY  
PARK RIDGE, IL 60068-1458  
Tel: 847-759-1110  
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Patient: RASCHER, RICHARD L DOB: 06/01/1941 Progress Note: John J Park, MD 09/24/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

LM Prasad057



# Exhibit Q

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER



**Brian S. Clay, MD**

9000 Waukegan Road, Suite 200 ~ Morton Grove, IL 60053  
Phone (847) 375-3000 ~ Fax (847) 929-1184

**PROGRESS NOTE**  
**Follow-Up Visit**

**Patient:** Richard L Rascher  
**MR#:** 828861  
**DOB:** 6/1/1941  
**DOV:** 11/19/2015

**Present History:**

The patient is a 74 year old male who presents for follow-up regarding his left hip and groin pain. Last seen back on 9/11/2015 at which time I recommended that he continue with PT. In the interim, the patient states that he has since developed a new problem with his low back however his left hip and groin pain is markedly improved. He endorses new onset low back pain 3 weeks ago which occurred without any trauma or falls. Regarding the treatment plan, he did see a chiropractor for adjustments who ordered a CT scan showing multiple vertebral fractures which appear to be acute and subacute in nature. Pain is currently described as constant, sharp, radiates around the abdomen. Intensity of pain/discomfort is rated 8/10 today.

The medical update form in the patients chart was reviewed and the patient reports no updates to his medical history.

**Physical Examination:**

General - The patient is well appearing. Body habitus is normal.

Eyes - Conjunctiva area clear.

HENT - Mucous membranes are moist.

Respiratory - Respirations are non-labored.

Gastrointestinal - The abdomen is soft and not distended.

Neurological - Gait is not antalgic.

Musculoskeletal - There is tenderness with palpation over the thoracolumbar spinous processes. Forward flexion reproduces back pain.

**Diagnostic Testing:**

I reviewed the imaging report from a recent CT lumbar spine showing multiple vertebral compression fractures at L1 and T11 as well as sacral insufficiency fractures.

**Impression and Plan:**

We discussed further treatment options today. Regarding medication management, I recommended starting Norco as needed for short term pain control. Regarding physical therapy, I recommended continuing home PT for the left hip for ongoing pain and symptom management. Regarding procedures, I will defer further interventions for now. I am referring him to Dr. Gleason for consideration for kyphoplasty. I also recommended that he follow-up again with Dr. Eisenberg to work him up for osteoporosis. The patient was counseled at length regarding the risks vs. benefits of this treatment plan. I educated the

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

patient regarding the treating diagnosis at the time of this encounter. The patient was instructed to follow-up with me in 1 month.



---

Brian S. Clay, MD

Date: 11/19/2015



## PROGRESS NOTE

**RE:** Rascher, Richard L  
**LOCATION:** Des Plaines  
**MRN:** P828861  
**DOB:** 06/01/1941  
**DOS:** 09/11/2015  
**Page 1**

**PRESENT HISTORY:** The patient is a 74-year-old gentleman who I have been following for chronic osteoarthritis of the hip and sacroiliac joint pain. I last saw him back on 08/26 at which time I performed an ultrasound-guided injection of the left sacroiliac joint. In the interim, the patient has been making significant progress with physical therapy and is currently able to ambulate significant distances with an assistive device without much discomfort. He is at an independent level with ADLs and functional mobility. However, he does require an assistive device with ascending and descending stairs at this time. The pain today is rated 2/10 intensity. It localizes to the left lower buttock without radiation into the groin or lower extremity. There is no associated numbness and tingling or weakness with the exception of what appears to be bilateral paresthesias involving the feet which does not appear to be related to any prior pathology of the hip or lumbar spine. The patient has expressed the desire to return to work, and from my perspective, is cleared to do so.

Complete review of systems and past family/social history documented on history intake form was reviewed and signed. Her medical history is otherwise unremarkable.

**PHYSICAL EXAMINATION:** The patient is well appearing and in no acute distress. There is no peripheral edema. Respirations are nonlabored. Abdomen is soft and nontender. He ambulates with a straight cane.

**DIAGNOSTIC STUDIES:** No new imaging studies were obtained.

**RE:** Rascher, Richard L  
**MRN:** P828861  
**DOB:** 06/01/1941  
**DOS:** 09/11/2015  
**Page 2 of 2**

**PLAN:** We discussed further treatment options. I recommended that he continue with the physical therapy and incorporate the exercises and a home exercise program for ongoing maintenance of his hip pain. I also recommend that he continue to use tramadol as needed for breakthrough pain and that he finish the prescription of meloxicam. However, he was instructed to discontinue use of meloxicam after 3 months. There is no indication for further injection therapy at this time. The patient is making good functional gains and is appropriate to return to work as stated above. He will follow up with me as needed in the future.



Digitally signed by proxy Brian S. Clay, M.D.

BSC JOB 116932910

IBJI000059



## PROGRESS NOTE

**RE:** Rascher, Richard L  
**LOCATION:** DR Ortho Access  
**MRN:** P828861  
**DOB:** 06/01/1941  
**DOS:** 08/26/2015  
**Page 1**

**PRESENT HISTORY:** The patient is a 74-year-old gentleman, who presents to me for followup regarding his left hip pain and left lower back pain. He was last seen on 08/11/2015 for left hip injection which he states did help with his left groin pain and anterior thigh pain. Today, he endorses more left buttock pain and low back pain. The pain is constant, aching, 7/10 intensity, worse with walking, worse with rolling over in the bed, better with rest. There is no associated numbness, tingling, or weakness. At this time, he has been participating with physical therapy and notes gradual improvement with his gait and balance. He also continues on tramadol as needed for pain. Medical history update form is reviewed in the medical chart and the patient reports no updates to his medical history.

**PHYSICAL EXAMINATION:** On physical exam, the patient is thin appearing, not in acute distress. There is bilateral pedal edema which is 1+. Respirations are nonlabored. Abdomen is soft and nontender. Reflexes and sensation are diminished with bilateral patellar and Achilles. There is tenderness to palpation over the left sacroiliac joint, but not the right. FABER's, Gaenslen's, and SI compression tests are positive on the left, but not the right.

**DIAGNOSTIC STUDIES:** No new imaging studies were obtained today.

**IMPRESSION AND PLAN:** We discussed further treatment options today. I did recommend that he continue with physical therapy program for maintenance and ongoing improvement with his gait. I also recommended that he continue to use tramadol as needed for breakthrough pain. We did proceed with a left SI joint injection today under ultrasound. The patient did report some immediate relief in his pain symptoms prior to being discharged in stable condition. He will follow up with me in approximately 2 weeks' time.

Digitally signed by proxy Brian S. Clay, M.D.

BSC JOB 116217302



## Treatment Note

Illinois Bone & Joint Institute Rehabilitation Services  
Des Plaines  
900 Rand Road  
Suite 110  
Des Plaines, IL 60016  
tel: 847-954-7646  
fax: 847-954-7648

Patient: Richard Rascher (MRN # P828861)  
Gender: M  
DOB: 06/01/1941

Visit #4: 08/06/2015  
Evaluation Date: 07/27/2015  
Injury Date: n/a  
Onset Date: n/a

Therapist of Record: Ann Phelps PT, DPT, OCS

Provider: Heather Elliott-Smith Account #: ACVMP  
PT, DPT, ATC  
Provider Email:  
helliottsmith@ibji.com

Referring Practitioner: MATTHEW JIMENEZ MD

# Medical Diagnoses	ICD9	# Treating Diagnoses	ICD9
1) Aftercare for healing traumatic fracture of hip	V54.13	1) Difficulty in walking	719.7

### Patient Status

The pain varies. Sometimes its in the tailbone. Today its here (indicates buttock, proximal posterior thigh).

I saw the doctor Tuesday. He gave me a few pills for the pain and a 6 pack (steroid). I don't have any relief yet.

I want to go back to work but I have to walk up 18 stairs and I can't focus because of the pain.

### Additional Evaluative Findings

Pt observed to shift weight to R on Nustep.

### Treatment Provided Today

The following interventions were performed for the patient's hip and thigh condition:

#### **Therapeutic Exercise (97110):** 40 min

Recumbent Bicycle - L 4 U/LE 10 min for gait retraining

glut squeeze - x10 with 10s hold in supine- with passive hip ext stretch L

Trunk Stabilization / Abdominal Strengthening: Supine activation - 2 sets 10 reps

PROM L hip flexion - 2 x10

Pelvicore Alt ADD/ABD - hooklying 2 x 10 3s hold

long arc quad - 3x10 RL progressed to 1lb

sit to stand - 2x10 table high UE required VC needed for standing straight for gait

balance - NBOS 15 sec x 4 ea

standing HR - 3x10

standing marching - 2x10 RL to assist with reciprocal movements with walking

Hip Extension / Gluteus Maximus Strengthening: Standing reverse leg raises - 2x10 RL to assist with hip extension during ambulation

#### **Therapeutic Activities (97530):** 0 min

#### **Neuromuscular Reeducation (97112):** 0 min

#### **Self-care / Home Management Training (97535):** 0 min

#### **Hot/Cold Pack (97010):** 10 min

CP 10 min to hip after ex

#### **Electrical Stimulation - Unattended 97014 (97014):** 0 min

### Provider Interactions With Patient During Visit

Pt monitored for pain and exercise modified as needed. Cuing provided for proper performance of ex.

### Assessment

Patient reports continued pain in the L >R hip at this time, despite recent change in medication which further impairs performance of ADLs. Continued supervised exercise is medically necessary to restore functional mobility as protection of the R hip is needed secondary to poor bone quality and recent ORIF/THA.